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Certificate of Secretary of Federal Trade Commission.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION, ss.:

IN THE MATTER of ARROW-HART & HEGEMAN, INC., *et al.*	Docket No. 1498.

2

I, OTIS B. JOHNSON, secretary of the Federal Trade Commission, do hereby certify that transmitted herewith is a full, true and correct transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings

3

Part 2—Testimony

Part 3—Original exhibits (Comm. Ex. 1 to 85 incl.)

Part 4—Original exhibits (Comm. Ex. 86 to 100 incl. Resp. Ex. 1 to 38 incl.)

and separate original exhibits marked:

Certificate of Secretary of Federal Trade Commission.

1	7	13	19	25	31	37	43
1498	1498	1498	1498	1498	1498	1498	1498
2	8	14	20	26	32	38	44
1498	1498	1498	1498	1498	1498	1498	1498
3	9	15	21	27	33	39	45
1498	1498	1498	1498	1498	1498	1498	1498
4	10	16	22	28	34	40	46
1498	1498	1498	1498	1498	1498	1498	1498
5	11	17	23	29	35	41	47
1498	1498	1498	1498	1498	1498	1498	1498
6	12	18	24	30	36	42	
1498	1498	1498	1498	1498	1498	1498	

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to the filing in said Court of a petition for review of an order to cease and desist, dated July 6, 1932, entered by the Federal Trade Commission in that proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 14th day of November, A. D., 1932.

OTIS B. JOHNSON,

OTIS B. JOHNSON,
Secretary.

Complaint.

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER of ARROW-HART & HEGEMAN INCORPORATED.	Docket No. 1498.

The Federal Trade Commission charges that Arrow-Hart & Hegeman Incorporated, hereinafter called respondent, is violated and has violated the provisions of Section 7 of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes", and the Federal Trade Commission states its charges in that respect as follows:

PARAGRAPH ONE: Respondent is a corporation organized under the laws of the State of Connecticut and has its principal office in the City of Hartford, in said State. Respondent has an authorized capital stock of $2,000,000 consisting of 200,000 shares of common stock all outstanding and at a par value of $10. per share. Respondent was organized and incorporated on or about October 4, 1927 for the purpose of acquiring the stock or share capital of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company, both corporations under the laws of the State of Connecticut. On or about October 10, 1927, respondent acquired

10 *Complaint.*

all of the common voting stock or share capital of said Hart & Hegeman Manufacturing Company and Arrow Electric Company and still holds, owns and controls such stock or share capital.

PARAGRAPH TWO: The Hart & Hegeman Manufacturing Company is a corporation organized in 1891 under the laws of Connecticut and has its principal office in the City of Hartford in said State. On and prior to the acquisition of its common stock by Arrow-Hart & Hegeman Incorporated it owned
11 and operated a plant located at Hartford, Connecticut, at which plant electrical wiring devices of various types, kinds and classes were made. It also owned all of the common stock of the H. T. Paiste Company, a subsidiary corporation, located at Philadelphia, Pennsylvania, and engaged in manufacturing electrical wiring devices which it sold to the parent corporation and all of the common stock of The Electric Porcelain & Manufacturing Company, a subsidiary corporation, located at Trenton, New Jersey, and engaged in manufacturing porcelain parts for electric wiring devices which it sold to the parent corporation. The total sales of
12 The Hart & Hegeman Manufacturing Company for the year 1926 were $4,089,621.11, of which $3,505,988.36 were made in interstate commerce. For many years Hart & Hegeman Manufacturing Company has been engaged in selling such electrical wiring devices and is and has been causing such electrical wiring devices when sold to be shipped and transported to purchasers among the several states of the United States and the District of Columbia in competition with said Arrow Electric

Company and with other persons and corporations similarly engaged and in so doing The Hart & Hegeman Manufacturing Company is and has been engaged in interstate commerce within the purview of said Act of Congress, approved October 15, 1914 (the Clayton Act).

PARAGRAPH THREE: The Arrow Electric Company is a corporation organized in 1905 under the laws of Connecticut, and has its principal office in the City of Hartford, in said State. On and prior to the acquisition of its common stock by respondent Arrow-Hart & Hegeman Incorporated, it owned and operated a plant located at Hartford, Connecticut, at which plant electrical wiring devices of various types, kinds and classes were made. It also owned all of the common stock of the Washington Porcelain Company, a subsidiary corporation, located at Washington, New Jersey, and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Arrow Electric Company for the year 1926 were $4,125,191.97, of which $3,869,715.96 were made in interstate commerce. For many years it has been engaged in selling such electrical wiring devices and is and has been causing such electrical wiring devices when sold to be shipped and transported to purchasers among the several states of the United States and the District of Columbia in competition with The Hart & Hegeman Manufacturing Company and with other persons and corporations similarly engaged and in so doing The Arrow Electric Company is and has been engaged in interstate commerce within the purview

of said Act of Congress approved October 15, 1914 (the Clayton Act).

PARAGRAPH FOUR: The effect of such acquisition by the respondent Arrow-Hart & Hegeman Incorporated of the stock or share capital of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company may be:

(a) To substantially lessen competition in electrical wiring devices between the Hart & Hegeman Manufacturing Company and the Arrow Electric
17 Company whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical wiring devices.

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PARAGRAPH FIVE: The use by the voting or granting of proxies, or otherwise, by respondent, Arrow-Hart & Hegeman Incorporated, of the stock or other share capital of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company has been and is:

(a) To substantially lessen competition in electrical wiring devices between the Hart & Hegeman Manufacturing Company and The Arrow Electric

Company whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical wiring devices. 20

WHEREFORE, the Federal Trade Commission on this 3rd day of March, 1928 issues this complaint against said Arrow-Hart & Hegeman Incorporated.

NOTICE.

Notice is hereby given you, Arrow-Hart & Hegeman Incorporated, respondent herein, that the 3rd day of May, A. D., 1928, at 10:30 o'clock in the forenoon, is hereby fixed as the time and the offices of the Federal Trade Commission, in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in 21 this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to Cease and Desist from the violation of the law charged in this complaint.

You are notified and required within 30 days from service of the complaint unless such time be extended by order of the Commission to file with the

Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answer and failure to answer (Rule III) provide as follows:

(1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless re-
23 spondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer unless respondent shall state in the answer that respondent is without knowledge shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding the answer may consist of a statement, that re-
24 spondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violation of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 3rd day of March, A. D., 1928.

By the Commission.

OTIS B. JOHNSON,
Secretary.

(SEAL)

28 **Order Fixing Time for Filing Answer.**

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 10th day of July, A. D., 1928.

Present—WILLIAM E. HUMPHREY, *Chairman*,
ABRAM F. MYERS,
EDGAR A. MCCULLOCH,
GARLAND S. FERGUSON, JR.,
C. W. HUNT,
29 *Commissioners*.

IN THE MATTER of ARROW-HART & HEGEMAN INCORPORATED.	Docket No. 1498. Order.

The above-entitled proceeding coming on for consideration upon the report of the Board of Review, dated May 11, 1928, recommending that the Commission proceed to try the case on its merits, and
30 the Commission having considered the same and being fully advised in the premises,

IT IS HEREBY ORDERED that the case proceed to trial in the regular course.

IT IS FURTHER ORDERED that respondent have 30 days from the date of service of this order to file with the Commission an answer to the complaint herein.

By the Commission.

OTIS B. JOHNSON,
Secretary.

(Seal)

Order Extending Time for Filing Answer.

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of August, A. D., 1928.

Present—WILLIAM E. HUMPHREY, *Chairman*,
ABRAM F. MYERS,
EDGAR A. MCCULLOCH,
GARLAND S. FERGUSON, JR.,
C. W. HUNT,
Commissioners.

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED.	Docket No. 1498.

This matter coming on to be heard upon the application of counsel for the respondent for an extension of 30 days from August 10, 1928 for filing answer to the complaint herein, and the Commission now being fully advised in the premises.

IT IS ORDERED that counsel for the respondent have to and until September 9, 1928 for filing answer to the complaint herein.

By direction of the Commission.

C. G. DUGANNE,
Acting Secretary.

(Seal)

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Answer.

(Filed Sept. 7, 1928.)

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED.	Docket No. 1498.

35

1. Paragraph 1 of the complaint is admitted except the statements therein contained that the purpose of the respondent's incorporation was to acquire and that by its acquisition of common stocks of The Hart & Hegeman Manufacturing Company and of The Arrow Electric Company it acquired all the share capital of both said companies, which are denied.

Further answering said paragraph, the respondent alleges that the outstanding capital of both companies is as follows:

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	Common (par $25)	Preferred (par $100)
The Hart & Hegeman Manufacturing Company	$500,000	$1,333,300
The Arrow Electric Company	750,000	1,895,000

1,050 shares of Arrow preferred, par $105,000, have been retired under the sinking fund provisions covering the issue of such preferred stock. None of the preferred stock of either company is owned by the respondent but all is in the hands of the public. The preferred stock of each company has exclusive

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voting rights in case of omission of dividends for four successive quarters or in case of other default. The companies, however, have acquired and hold in their treasuries, for the purpose of later retirement under the sinking fund provisions, about 7,437 additional shares of preferred stock in the aggregate, leaving in the hands of individual holders 24,846 shares representing at par $2,484,600. These 24,846 shares are held by 958 individuals.

2. Paragraphs 2 and 3 of said complaint are denied insofar as they imply that The Hart & Hegeman Manufacturing Company and The Arrow Electric Company manufactured and sold and do now manufacture and sell identical products in all respects and in wholly identical fields. Further answering said paragraphs, the respondent alleges that the products of said two companies were and are similar only in part and that the said products were and are distributed in the same fields only in part.

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3. Paragraph 4 of said complaint is denied.

4. Paragraph 5 of said complaint is denied.

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And further answering respondent alleges:

5. The death of the president and active head of The Hart & Hegeman Manufacturing Company in February 1927 was the primary cause for the incorporation and organization of respondent. Until his death said president with his family and trusts created by him owned over 50% of the common stock of The Hart & Hegeman Manufacturing Company. Most of the remaining shares were owned

by his friends and associates in that company. Following his death the estate of said president and his family wished to dispose of their holdings. Such stock being so closely held it followed that the company as a whole was for sale.

6. The logical purchaser of The Hart & Hegeman Manufacturing Company was to be found, it developed, only through a merger of that company with The Arrow Electric Company also located in Hartford as the death of the president of The Hart & Hegeman Manufacturing Company left it without an assured position in the industry.

7. The Hart & Hegeman Manufacturing Company then had and still has a large and profitable business in the manufacture and sale of specially designed switches which it made and sold to manufacturers of electrical appliances for use on their product, such as drills, vacuum cleaners, radio sets and other articles requiring a peculiar type of switch. This special business constituted and now constitutes over one-third of the entire output of The Hart & Hegeman Manufacturing Company. In that business it has no real competition with The Arrow Electric Company.

8. The Hart & Hegeman Manufacturing Company furthermore then had and still has a large export business in which field The Arrow Electric Company does very little. Such foreign trade amounts to approximately $150,000 per annum or about one-eighth of all the annual sales of The Hart & Hegeman Manufacturing Company. About one-half of the business of the latter company, therefore, is non-competitive with the business of The Arrow Electric Company.

9. In the incorporation and organization of the respondent there was no purpose or intention of violating any of the provisions of the Clayton Act. The incorporators and present officers of respondent then believed and were advised that as the two constituent companies controlled in the aggregate less than one-fifth of the business of the electric wiring device industry and as that industry was well established and organized and they were faced with keen competition from a large number of established manufacturers including some of the largest concerns in the electrical field, the organization of respondent could not, under the rule of reason, be deemed to infringe any of the laws against monopoly or restraints of trade, including the Clayton Act.

10. The purpose in bringing the two companies together was to effectuate a lowering of manufacturing costs, elimination of unnecessary duplications and waste and resulting economies of production.

11. The plan to organize respondent, instead of a merger of the two constituent companies, was adopted solely to preserve the very large good-will value which attached and still attaches to the widely known and distinctive trade marks and brands of each of the two companies, the proprietary value of which had come from, and is dependent upon, intense sales effort. There is strong competition between the constituent companies incident to the brands or trade labels under which their respective competitive goods are manufactured and also through efforts of their sales organizations which are entirely separate and aggressive.

46 *Answer.*

12. The electric wiring device industry is highly developed. There are about 75 different manufacturing concerns which are in competition with The Hart & Hegeman Manufacturing Company and The Arrow Electric Company. Competition is severe. In such a field success cannot come from price manipulation but is dependent upon quality, salesmanship and publicity for established brands. To meet competition and at the same time to maintain quality it is necessary to reduce costs by drastic manufacturing economies.

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13. The acquisition by respondent of the common stocks of the constituent companies has resulted in large manufacturing economies to both companies and further economies will be made.

14. The effect of such acquisition will be to preserve and stimulate competition in the electric wiring device industry.

15. The public has not been nor will it be injured by said acquisition. On the contrary, such acquisition has been and will continue to be beneficial to the public.

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16. Neither respondent nor the two constituent companies jointly or severally have done anything tending to create a monopoly or tending to restrain trade or commerce. The sales of each is less than 10% of the total sales of all companies in the electric wiring device field, so far as respondent is informed and believes.

17. The shares of the capital stock of respondent are actively traded in on the stock market of Hart-

ford. Following the organization of respondent and the issue of its shares in exchange for the common shares of the two constituent companies, the interest previously in control of The Hart & Hegeman Manufacturing Company sold practically all its shares to employees and to bankers who sold the same to the public.

Respondent has over 900 stockholders, all of whom will be seriously injured by any order requiring its dissolution other than through absolute merger of the two constituent companies in accordance with the statutes of Connecticut in such case made and provided.

WHEREFORE, this respondent, having fully answered the charges contained in the complaint prays that the same may be dismissed.

Dated at Hartford this 7th day of September, 1928.

ARROW-HART & HEGEMAN COMPANY,
By EDWARD R. GRIER,
Its President.

ARTHUR L. SHIPMAN,
CHARLES WELLES GROSS,
Attorneys for Respondent.

52 **Order Appointing Examiner and Fixing Time and Place for Taking Testimony.**

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 28th day of January, A. D., 1929.

Commissioners—EDGAR A. MCCULLOCH, *Chairman*.
GARLAND S. FERGUSON, JR.,
53 C. W. HUNT,
WILLIAM E. HUMPHREY,

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED.	Docket No. 1498.

This matter being at issue and ready for the taking of testimony,

54 IT IS ORDERED that George McCorle, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law.

IT IS FURTHER ORDERED that the taking of testimony in this proceeding begin on Monday, February 18, 1929, at 2:00 o'clock in the afternoon of

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that day, at the Federal Court Room, third floor, U. S. Post Office & Court House Building, Hartford, Connecticut.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

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OTIS B. JOHNSON,
Secretary.

(Seal)

57

58 **Motion for Issuance of Supplemental Complaint.**

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED.	Docket 1498.

59

COMES NOW Robt. E. Healy, Chief Counsel to the Federal Trade Commission, and shows to the Commission that certain steps taken by the respondent, subsequent to the issuance of complaint herein, by way of reorganization, and the vesting of certain rights, property, stock and franchises in The Arrow-Hart & Hegeman Electric Company are in continued violation of Section 7 of that certain Act of Congress known as the Clayton Act:

WHEREFORE the Chief Counsel moves the Commission to issue a supplemental complaint herein,
60 charging the continued violation of said Section 7 of the Clayton Act by the present respondent corporation and charging violation of the said Act of Congress by The Arrow-Hart & Hegeman Electric Company, aforesaid, and that such supplemental complaint issue against both said corporations in accordance with the form attached hereto and made a part hereof; and moves moreover that the Commission set a day certain, as early as may be practicable, to hear argument on behalf of the present

motion and on behalf of the respondent and proposed new respondent, if they shall desire to be heard, and that notice of hearing, together with a copy of the present motion and of the form of supplemental complaint proposed to be issued, shall be served upon respondent, through its counsel, and upon the proposed respondent corporation.

ROBT. E. HEALY,
Chief Counsel.

June 25, 1929.

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64 **Order for Issuance of Supplemental Complaint.**

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of June, 1929.

Commissioners—EDGAR A. MCCULLOCH, *Chairman*.
GARLAND S. FERGUSON, JR.,
65 C. W. HUNT,
WILLIAM E. HUMPHREY,
CHARLES H. MARCH.

IN THE MATTER of the ARROW-HART & HEGEMAN, INCORPORATED, and THE ARROW-HART & HEGEMAN ELECTRIC COMPANY.	Docket 1498.

66

On motion of the Chief Counsel it appearing that respondent, Arrow-Hart & Hegeman, Incorporated, has taken various steps and has organized several corporations to the end that the franchises, stock and property of those certain formerly competing corporations, to restore competition between which this proceeding was instituted pursuant to Section 7 of the Clayton Act, shall be vested in The Arrow-Hart & Hegeman Electric Company, and it appearing further that the steps taken by said respondent have not resulted in the restoration of competition

between the said formerly competing corporations, but have rather resulted in the continued elimination of such competition, and will continue so to result, unless further steps in the present proceeding be taken, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the Secretary issue supplemental complaint herein in manner and form hereto attached and that the same be served upon respondent Arrow-Hart & Hegeman, Incorporated, through counsel by whom its appearance herein was made, and upon said The Arrow-Hart & Hegeman Electric Company, a corporation, now to be added as party respondent by the service of the said supplemental complaint. 68

By order of the Commission.

OTIS B. JOHNSON,
Secretary.

(Seal)

69

70 **Supplemental Complaint.**

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED AND THE ARROW-HART & HEGEMAN ELECTRIC COMPANY.	Docket 1498.

71 WHEREAS the Federal Trade Commission heretofore, to-wit on the 3rd day of March 1928, issued a complaint against respondent Arrow-Hart & Hegeman, Inc., charging that, by its acquisition of the stocks of two other and formerly competing corporations, said respondent had violated and was then violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" and known as the Clayton Act; and

72 WHEREAS since the issuance of the said complaint said respondent has carried out certain steps, hereafter set forth, collectively designated by it as a course of "reorganization," whereby a corporation known as The Arrow-Hart & Hegeman Electric Company has been formed by the merger and consolidation of the two said formerly competing corporations and of two certain holding corporations, hereinafter described, and

WHEREAS the said so-called reorganization by said respondent, Arrow-Hart & Hegeman, Inc. has

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vested all the stock, franchises, property and assets of the said formerly competing companies and of the said holding companies in the said The Arrow-Hart & Hegeman Electric Company without having restored competition between the two said originally competing companies in and for the benefit of the public as by the said Clayton Act required, but rather with the purpose, and, unless the instant proceeding prevail, with the result of perpetuating the destruction of competition between the two said originally competing corporations:

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WHEREFORE The Federal Trade Commission brings this, its supplemental complaint, adding to the original corporate party respondent, the said merged and consolidated corporation, the said The Arrow-Hart & Hegeman Electric Company, and thereunto alleges and charges as follows, to-wit:

PARAGRAPH ONE: Respondent, Arrow-Hart & Hegeman, Inc. on or about October 4, 1927 was organized under the laws of the State of Connecticut, with its principal place of business in the City of Hartford in said state, remained a corporation with all its corporate rights and powers until its 75
dissolution as described in Paragraph Seven (j) hereof and still retains its corporate entity to such extent as may be necessary to effectuate the relief designed in the regulation of interstate and foreign commerce by the enactment of the federal Anti-trust laws. It had an authorized capital stock of $2,000,000 consisting of 200,000 shares of common stock outstanding and of par value of $10.00 per share. Said respondent's incorporation was for the purpose of acquiring the stock or share capital of The Hart & Hegeman Manufacturing Company

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and of The Arrow Electric Company, both corporations under the laws of the State of Connecticut, and on or about October 10, 1927, it did so acquire all of the common voting stock or share capital of two last named companies and continued to hold, own and control such stock or share capital until subsequent to the issuance of the original complaint herein to-wit until the events averred in Paragraph Seven (b) hereof.

PARAGRAPH TWO: The Hart & Hegeman Manufacturing Company was, and until the merger de-
77 scribed in Paragraph Seven (f) hereof, remained a corporation under the laws of Connecticut, organized in 1891 with its principal place of business in the City of Hartford in said State. On and prior to the acquisition of its common stock by Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Connecticut, at which plant electric wiring devices of various types, kinds and classes were made. It also owned all of the common stock of the H. T. Paiste Company, a subsidiary corporation, located at Philadelphia, Pennsylvania, and engaged in manufacturing electrical wiring devices which it sold to the parent corpora-
78 tion and all of the common stock of The Electric Porcelain & Manufacturing Company, a subsidiary corporation, located at Trenton, New Jersey, and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Hart & Hegeman Manufacturing Company for the year 1926 were $4,089,621.11, of which $3,505,988.36 were made in interstate commerce. For many years Hart & Hegeman Manufacturing Company was engaged in selling such electrical wiring devices and caused such electrical wiring devices when

sold to be shipped and transported to purchasers among the several states of the United States and the District of Columbia in competition with The Arrow Electric Company aforesaid and with other persons and corporations similarly engaged and in so doing The Hart & Hegeman Manufacturing Company was engaged in interstate commerce within the purview of the aforesaid Clayton Act.

PARAGRAPH THREE: The Arrow Electric Company was, and until the merger and consolidation described in Paragraph Seven (f), remained a corporation organized under the laws of the State of 80
Connecticut, in 1905, having its principal place of business in the city of Hartford in said State. On and prior to the acquisition of its common stock by respondent Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Connecticut, at which plant electrical wiring devices of various types, kinds and classes were made. It also owned all of the common stock of the Washington Porcelain Company, a subsidiary corporation, located at Washington, New Jersey, and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Arrow Electric 81
Company for the year 1926 were $4,125,191.97 of which $3,869,715.96 were made in interstate commerce. For many years, it was engaged in selling such electrical wiring devices and caused such electrical wiring devices when sold to be shipped and transported to purchasers among the several states of the United States and the District of Columbia in competition with The Hart & Hegeman Manufacturing Company and with other persons and corporations similarly engaged and in so doing The Arrow Electric Company was engaged in interstate

commerce within the purview of the aforesaid Clayton Act.

PARAGRAPH FOUR: The effect of such acquisition by respondent, Arrow-Hart & Hegeman, Inc. of the stock or share capital of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company may be

(a) To substantially lessen competition in electrical wiring devices between The Hart & Hegeman Manufacturing Company and The
83 Arrow Electric Company whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical
84 wiring devices.

PARAGRAPH FIVE: The use by the voting or granting of proxies or otherwise by respondent, Arrow-Hart & Hegeman, Incorporated of the stock or other share capital of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company, has been and is:

(a) To substantially lessen competition in electrical wiring devices between The Hart & Hegeman Manufacturing and The Arrow Elec-

tric Company whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some sections or communities; or

(c) Tending to create a monopoly of commerce in electrical wiring devices, of various types, kinds and classes or in some such electrical wiring devices.

PARAGRAPH SIX: Alleging facts substantially as in Paragraphs One to Five, hereof inclusive, the Commission on March 3, 1928, issued its complaint against respondent; Arrow-Hart & Hegeman, Incorporated, under Section 7 of the said described Clayton Act. Respondent corporation appeared and filed its answer on September 7, 1928.

PARAGRAPH SEVEN: On November 10, 1928, the president of respondent, Arrow-Hart & Hegeman, Incorporated, notified the stockholders thereof by circular letter that the dissolution of said corporation and the distribution of its assets among its stockholders had been recommended by counsel and that the directors had voted to recommend such plan to the stockholders. By the said circular letter, and by a circular letter also addressed to the stockholders of said Arrow-Hart & Hegeman, Incorporated dated December 1, 1928 a plan of so-called "reorganization" was propounded to the said stockholders who controlled, as in Paragraph One hereof described, through Arrow-Hart & Hegeman,

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Incorporated as a holding company, the stock of the two formerly competing concerns, to-wit The Hart-Hegeman Manufacturing Company and The Arrow Electric Company. The method of reorganization thus recommended was adopted, carried into effect and consisted of the following steps:

(a) Between December 1 and December 7, 1928, two new Connecticut incorporations, The Arrow Manufacturing Company and The H. & H. Electric Company were organized, solely by action of said respondent.

89 (b) Immediately thereafter the common stock of The Arrow Electric Company was transferred by Arrow-Hart & Hegeman, Incorporated to The Arrow Manufacturing Company and at the same time the common stock of The Hart & Hegeman Manufacturing Company was transferred by respondent, Arrow-Hart & Hegeman, Incorporated to The H. & H. Electric Company.

(c) Simultaneously with and as the consideration to respondent, Arrow-Hart & Hegeman, Incorporated for the transfers last described, The Arrow Manufacturing Company and The H. & H. Electric Company in pursuance of a vote taken by the Arrow-Hart & Hegeman, Incorporated issued to the stockholders of respondent, Arrow-Hart & Hegeman, Incorporated, and in the respective name of each such stockholder all of their shares of capital stock. To this end a transfer agent acting for the reorganizing interests, delivered to the said respective stockholders non-negotiable receipts, advising that the certificates of such stock would be held for their account,

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unless they insisted upon a present delivery thereof.

(d) Accordingly by virtue of such exchange each recipient stockholder of respondent, Arrow-Hart & Hegeman, Incorporated became the owner of the same number of shares of The Arrow Manufacturing Company as each owned in said respondent and of the same number of shares of The H. & H. Electric Company, as each owned in said respondent. But the new shares were not delivered to the said stockholders unless by specific instruction.

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(e) On December 10, 1928 the stockholders of respondent, Arrow-Hart & Hegeman, Incorporated, voted to dissolve said respondent corporation, in conformity with a recommendation of the directors favoring dissolution which had been voted November 10, 1928.

(f) On December 31, 1928, at successive hours the stockholders of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company acted favorably upon a merger and consolidation agreement under the laws of the State of Connecticut. And on the same day, immediately effective, the Secretary of State of Connecticut approved the merger and consolidation of the said four incorporations.

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(g) The consolidated corporation is respondent, The Arrow-Hart & Hegeman Electric Company with an authorized capital stock of $7,083,300, of which $3,750,000 is common stock and $3,333,300 is preferred stock. The capital stock with which this company com-

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menced business was $5,228,300, divided into 200,000 shares of common stock of $10 par value each, and 32,283 shares of preferred stock of $100 par value each. Preferred stockholders have no power to vote "except as provided by statute" unless in case of default in payment of dividends on preferred stock for six quarters.

(h) The following is the manner in which the shares of the common stock in each of the consolidating companies were "converted" into
95 shares of the common stock with which the consolidated corporation commenced business:

100,000 shares thereof were issued in lieu of the entire capital stock of The Arrow Manufacturing Company, the latter being 200,000 shares of common stock, at the rate of one-half of one share in the consolidated company in exchange for one share in The Arrow Manufacturing Company.

Another 100,000 shares thereof were issued in lieu of the entire capital stock of The H. & H. Electric Company the latter being 200,000 shares of stock, at the rate of one-
96 half of one share in the consolidated company in exchange for one share in The H. & H. Electric Company.

No shares of the consolidated company were issued in lieu of the outstanding common stock, 30,000 shares of $25 par value each in The Arrow Electric Company, since all of the common stock of the latter company was, on such consolidation, owned by The Arrow Manufacturing Company. Similarly, no shares of the consolidated company were issued in lieu of the common stock,

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20,000 shares of $25 par value each, in The Hart & Hegeman Manufacturing Company, since all the common stock in the last named company was then owned by The H. & H. Electric Company.

(i) The following was the manner of converting the shares of preferred stock, in such of the consolidating companies as had preferred stock outstanding, into shares of preferred stock with which the respondent consolidated company commenced business, to-wit:

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18,950 shares were issued, share for share in lieu of the entire then outstanding preferred stock in The Arrow Electric Company, the shares exchanged being identical in number and in par value.

The balance of 13,333 shares were issued in lieu of the entire then outstanding preferred stock, identical in number of shares and in par value, of The Hart & Hegeman Manufacturing Company.

(j) On April 11, 1929, the final certificate of dissolution of the respondent Arrow-Hart & Hegeman, Incorporated was executed.

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PARAGRAPH EIGHT: The stocks of the two aforesaid formerly competing corporations, The Hart & Hegeman Manufacturing Company and The Arrow Electric Company acquired unlawfully as charged in the original complaint in this proceeding, were used by respondent throughout the aforesaid reorganization, as in Paragraph Seven hereof alleged, to effect the merger and consolidation alleged in Paragraph Seven, subparagraphs (f) to (i) inclu-

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sive hereof described. By such merger and consolidation, unless this proceeding prevail, the said stocks were so used as finally to vest the physical properties, franchises and share capital of both the said formerly competing corporations in respondent The Arrow-Hart & Hegeman Electric Company and thereby to perpetuate the elimination of competition between the said formerly competing corporations, in the following manner:

(a) The transfer of the stock of The Arrow Electric Company to The Arrow Manufacturing Company and also the transfer of the stock of The Hart & Hegeman Manufacturing Company to The H. & H. Electric Company by respondent Arrow-Hart & Hegeman, Incorporated, were not preceded by the restoration of the independent and competitive character of the said two formerly competing corporations nor of the diverse interests which they had represented. The said transfers were accomplished solely by the direct use of the voting franchise of the stockholders of respondent Arrow-Hart & Hegeman, Incorporated in the exercise of powers which resulted immediately from said respondent's acquisition of the stocks of the said two formerly competing companies contrary, as charged in the original complaint herein, to Section 7 of the Clayton Act. In exercising their voting franchise to this end the stockholders of said respondent did not act as stockholders in either of the respective formerly competing corporations. They acted as stockholders in said respondent after all conflicting interests between the said originally competing corporations had been

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eliminated. The same voting body, to-wit the stockholders of respondent, Arrow-Hart & Hegeman, Incorporated, included the owners of both said formerly competing corporations and acted alike upon both transfers to the said new holding corporations, The Arrow Manufacturing Company and The H. & H. Electric Company. Any moving consideration to act independently as regards the two formerly diverse and competing interests had been extinguished and was not restored prior to the said transfers.

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(b) The consideration to the respondent Arrow-Hart & Hegeman, Incorporated for the surrender by said respondent of the stocks in the said formerly competing corporations was the promised transfer to said respondent of all the shares of the capital stock in the said newly formed holding companies, which shares were to be and actually were issued direct to said respondent's stockholders, in lieu of being issued to respondent, pursuant to a vote taken by the said respondent corporation. This consideration to the said respondent and its stockholders was made possible through the original unlawful acquisition of the share capital of the said originally competing corporations by the said respondent.

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(c) When the aforesaid four corporations voted to consolidate, as in Paragraph Seven (f) hereof described, the shareholders of respondent Arrow-Hart & Hegeman, Incorporated, as the direct result of the said unlawful acquisition of the share capital of the said formerly competing corporations, had control

106 *Supplemental Complaint.*

over the said formerly competing corporations through their ownership of the share capital of the said newly formed holding corporations. The four corporations when they voted to consolidate no longer comprised two respective, independent or distinct voting bodies, but their interests and ownerships had already consolidated and merged. Each stockholder of said respondent had an interest in the existence, franchises, property and stocks of both the Arrow and the Hart & Hegeman interests.

107 There was no stockholder in either so-called "Arrow" company who did not have the same interests in the corresponding "Hart & Hegeman" or "H. & H." corporation. No one of the said four corporations which voted to merge and consolidate voted under the same circumstances, with the same body of voters or prompted by the same consideration as would have existed if the alleged unlawful acquisition of the stocks of the said two originally competing corporations had not been made by respondent Arrow-Hart & Hegeman, Incorporated.

108 PARAGRAPH NINE: The divestment by respondent Arrow-Hart & Hegeman, Incorporated in favor of the two newly formed holding corporations, The Arrow Manufacturing Company and The H. & H. Electric Company, was not such a divestment as to constitute a compliance with said Section 7 of the Clayton Act. Competition was not restored. The said new holding corporations were created by said respondent and received the stocks of the said formerly competing corporations only on consideration of their transferring of their own share capital

to the stockholders of the said respondent. A new and complete violation of said Section 7 of the Clayton Act was brought about by respondent Arrow-Hart & Hegeman, Incorporated by its acquisition, in the name of its stockholders direct of the stocks of the said two new holding corporations.

PARAGRAPH TEN: The steps of reorganization described in Paragraph Seven hereof were undertaken and were consummated, largely by the use of proxies, at the instance and through the leadership, aid and instigation of respondent Arrow-Hart & Hegeman, Incorporated. These steps were but parts of a unified plan and, as set forth in Paragraph Eight hereof, were all made possible by the original acquisition of the stocks of the formerly competing corporations, The Hart & Hegeman Manufacturing Company and The Arrow Electric Company, by respondent Arrow-Hart & Hegeman, Incorporated. Against the said acquisition, the Federal Trade Commission, in order to restore competition between the said formerly competing corporations as required by the aforesaid Section 7 of the Clayton Act, directed its original complaint in this proceeding, as in Paragraph Six hereof described. Said action was timely and prior to the securing of actual title and possession by either respondent corporation, to the physical property of said formerly competing corporations.

PARAGRAPH ELEVEN: The intent and purpose of respondent, Arrow-Hart & Hegeman, Incorporated and its officers and stockholders in advocating, directing and taking the steps described in Paragraph Seven hereof, was to oust the Federal Trade

112 Commission of its statutory powers and jurisdiction over the aforesaid acquisition of stock by said respondent, Arrow-Hart & Hegeman, Incorporated, and the same time to retain and to perpetuate the elimination of all competition, which had previously existed as in Paragraph Three hereof set forth, between the Arrow Electric Company and The Hart & Hegeman Manufacturing Company. Said competition, respondent Arrow-Hart & Hegeman, Incorporated through the steps described in Paragraphs One and Four to Seven, inclusive, hereof has uniformly and constantly aimed to destroy. To this end the respondent corporations have employed certain statutory provisions made by the legislature of the State of Connecticut for the dissolution and for the merger and consolidation of its corporations, for purposes which were not within the contemplation of the legislature in enacting the said provisions and in such a manner and with such effect, unless this proceeding prevail, as to bring about an evasion of the Commerce Clause of the federal constitution, and a violation of Section 7 of the said Clayton Act, enacted in order to carry into effect certain of the powers granted by the Commerce Clause. The course of action of respondent Arrow-Hart & Hegeman, Incorporated and its aforesaid creature corporations and the formation by merger and consolidation of respondent, The Arrow-Hart & Hegeman Electric Company, as described in Paragraph Seven, are of no force and effect to accomplish a violation of the said Section of the Clayton Act or to effect the ousting of the Federal Trade Commission from its jurisdiction over the matters and things alleged in the original complaint or over those herein set forth.

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WHEREFORE, the Federal Trade Commission on this 29th day of June, A. D., 1929, issues this, its supplemental complaint, against said Arrow-Hart & Hegeman, Incorporated and The Arrow-Hart & Hegeman Electric Company.

NOTICE.

Notice is hereby given to, Arrow-Hart & Hegeman, Incorporated and The Arrow-Hart & Hegeman Electric Company, respondents herein, that the 2nd day of August, A. D., 1929, at 2:00 o'clock in the afternoon, is hereby fixed as the time, and 116
the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required on or before said date, to file with the Commission an answer to the complaint. If answer is filed appearance on that date will not be required and the hearing on the charges will be postponed to a later date, due notice 117
of which will be given. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule III) provide as follows:

> (1) In case of desire to contest the proceeding the respondents shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint) file with the Commission answer to the complaint.

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Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondents shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondents are without knowledge, in which case respondents shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondents shall state in the answer that respondents are without knowledge, shall be
119 deemed to be admitted to be true and may be so found by the Commission.

(2). In case respondents desire to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondents refrain from contesting the proceeding or that respondents consent that the Commission may make, enter, and serve upon respondents an order to cease and desist from the violations of the law alleged in the complaint, or that respondents admit all the allegations of the complaint to be true. Any such answer
120 shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondents to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

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IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 29th day of June, A. D., 1929.

By the Commission:

OTIS B. JOHNSON,
Secretary.

(SEAL)

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124 **Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint.**

(Filed October 14, 1929.)

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER of ARROW HART & HEGEMAN, INC. and 125 THE ARROW-HART & HEGEMAN ELECTRIC COMPANY.	Docket No. 1498.

The Arrow-Hart & Hegeman Electric Company, cited into this proceeding by notice dated June 29, 1929 reserving at all times its right to object to the jurisdiction of the Federal Trade Commission over it in this proceeding, files this answer to the Supplemental Complaint.

1. The Arrow-Hart & Hegeman Electric Company, hereinafter called the "new respondent," adopts by reference the answer of Arrow-Hart & 126 Hegeman, Incorporated, hereinafter called the "old respondent," and makes such answer of the old respondent a part hereof as fully as if set forth at length herein.

2. The new respondent denies the allegations of the complaint and of the preambles of the Supplemental Complaint in so far as they allege that the old respondent carried out certain steps whereby the new respondent was formed and that the so-called reorganization by the old respondent

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vested all the stock, franchises, property and assets of the said formerly competing companies and of said holding companies in the new respondent, the new respondent alleging that the old respondent was not in any way a party to the merger and consolidation resulting in the new respondent.

3. Paragraph 1 of the Supplemental Complaint is admitted, except (a) in so far as Paragraph 1 of the original complaint is denied in the original answer, and (b) except in so far as Paragraph 1 of the Supplemental Complaint alleges that the old 128
respondent still retains its corporate existence to such extent as may be necessary to effectuate the relief designed in the regulation of interstate and foreign commerce by the enactment of federal anti-trust laws, which is denied.

4. In answer to Paragraphs 2 and 3 of the Supplemental Complaint the new respondent incorporates that portion of the answer to the original complaint dealing with Paragraphs 2 and 3 of the original complaint.

5. Paragraphs 4 and 5 of the Supplemental 129
Complaint are denied.

6. Paragraph 6 is admitted.

7. As to Paragraph 7, the general statement contained in the first clause of Paragraph 7 is admitted except that it is denied that The Hart & Hegeman Manufacturing Company and The Arrow Electric Company were competing concerns within the meaning and intent of the Anti-Trust laws and especially of the Clayton Act.

130 *Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint.*

As to clauses (a) and (b) of Paragraph 7, it is denied that the two Connecticut corporations, The Arrow Manufacturing Company and The H. & H. Electric Company were organized solely by action of the old respondent. Neither the directors, nor the officers as such, of said old respondent, nor its stockholders through corporate action had any part or lot in the organization of said companies.

Clauses (c), (d) and (e) of Paragraph 7 are admitted except the allegation in (c) that the transfer agent was "acting for the reorganizing interests" which is denied.

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The steps taken by the old respondent in reference to this matter were as follows:

(a) Following the hearing by the Board of Review and following a conference with the Chief Counsel of the Commission, counsel of the old respondent on November 10, 1928 recommended to its directors that without prejudice to its rights the company be dissolved and its assets distributed to its stockholders to meet the criticism of the Commission that this holding of the common stocks of The Arrow Electric Company and of The Hart & Hegeman Manufacturing Company was in violation of the Clayton Act.

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(b) On November 10, 1928 the directors voted to terminate the corporate existence of the old respondent and, as required by law, called a meeting of the stockholders to be held on December 10, 1928 to confirm such action and to authorize the directors to distribute the assets to its stockholders in such manner as they might determine. Call for such meeting was published once each week for four successive weeks in a daily newspaper pub-

lished in the city of Hartford and a copy thereof was mailed to each of its stockholders, numbering about 950, as required by law. A copy of such notice, with the accompanying letter to stockholders dated November 10, 1928, is attached hereto, marked Exhibit A, and made a part of this paragraph.

(c) Before said meeting was held on December 10, 1928 the directors of the old respondent were advised by counsel, on or about November 30, 1928, that a distribution to said 950 stockholders of its assets in kind, consisting of the common shares of The Hart & Hegeman Manufacturing Company and of The Arrow Electric Company, might involve them in a claim by the Treasury Department of a profit taxable to them, since such distribution would be in final liquidation.

(d) Thereupon three individuals in each case, acting on behalf of the stockholders of the old respondent, caused to be incorporated and organized two corporations under Connecticut law known as The H. & H. Electric Company and The Arrow Manufacturing Company. The purpose of the incorporation and organization of these companies was to take on behalf of the stockholders of the old respondent a transfer of the shares of common stock of The Hart & Hegeman Manufacturing Company and of The Arrow Electric Company respectively, in consideration of the issue of the shares of each of the new corporations directly to the stockholders of the old respondent, instead of their receiving the same in kind on dissolution and liquidation, as a form of reorganization recognized by the Revenue Act of 1928 involving no taxable gain,

136 and those transfers were subsequently made on or about December 6, 1928.

(e) Pursuant to such advice of counsel the directors of the old respondent at a meeting held on November 30, 1928, in lieu of distributing its assets on dissolution and liquidation, voted to recommend to its stockholders, as a form of reorganization recognized by the Revenue Act of 1928 involving no taxable gain, a general plan under which the old respondent would transfer all its shares of
137 the common stock of The Hart & Hegeman Manufacturing Company to The H & H Electric Company and would transfer all its shares of the common stock of The Arrow Electric Company to The Arrow Manufacturing Company in exchange for the issue by each of those new companies of all their shares to the stockholders of the old respondent, with the further suggestion that after that step was taken those four companies might merge under Connecticut law. A copy of the letter to the stockholders of the old respondent, dated December 1, 1928, outlining these recommendations of the directors is attached hereto, marked Exhibit B, and
138 made part of this paragraph.

(f) At a special meeting of the stockholders of the old respondent, held on the 6th day of December, 1928, prior to the meeting called for dissolution, the recommendations of the directors, including an outline of a plan of reorganization, were adopted, and the transfer of all the shares held by it was made.

(g) On December 10, 1928 the special meeting of the stockholders of the old respondent, called to

take action upon the recommendation of the directors for its dissolution, was held and the stockholders of the old respondent voted to confirm the action of the directors to terminate the corporate existence.

(h) Thereupon a majority of the directors of the old respondent, as required by law, made and signed a preliminary certificate of dissolution of the old respondent, dated the 10th day of December, 1928, and filed said certificate in the office of the Secretary of State on the 10th day of December, 140
1928, and the directors thereupon caused notice of such dissolution to be advertised as required by law.

(i) A copy of the minutes of the stockholders' meeting of the old respondent held December 6, 1928 and December 10, 1928 is attached hereto, made a part of this Answer, and marked Exhibit C.

(j) Except as above stated, the old respondent took no steps and made no agreement to secure the adoption of any part of the plan of reorganization set out by it in the minutes of its meeting of December 6, 1928. 141

(k) The old respondent did not use, by voting or granting of proxies or otherwise the stock or other share capital of The Hart & Hegeman Manufacturing Company and/or of The Arrow Electric Company, directly or indirectly in any way, to carry out the so-called plan of reorganization or to accomplish the merger of The Hart & Hegeman Manufacturing Company, The Arrow Electric Company, The H & H Electric Company and The Arrow Manufacturing Company,

142 *Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint.*

(l) No persons claiming to be creditors of the old respondent presented any claims to its directors acting as trustees. Accordingly on April 11, 1929 a majority of the directors of the old respondent, as required by law, executed and filed in the office of the Secretary of the State of Connecticut a certificate showing that they had completed their duties as trustees in liquidation. Said certificate was examined and approved by the Secretary of State and thereupon the dissolution of the old re-
143 spondent was complete. A copy of such certificate with the endorsement of the Secretary of State thereon is attached hereto, marked Exhibit D and made a part of this paragraph.

(m) The distribution by the old respondent of all its assets, consisting of shares of the common stock of The Hart & Hegeman Manufacturing Company and of The Arrow Electric Company, to its stockholders directly or through the medium of The H & H Electric Company and The Arrow Manufacturing Company was not done in violation of the Clayton Act or of any of the anti-trust laws of the United States, but was done in order to comply
144 with the criticism of the Commission that it should cease and desist from holding such shares.

(n) From and after December 6, 1928, on which date the old respondent transferred its shares in said companies, The Hart & Hegeman Manufacturing Company and The Arrow Electric Company became and were independent companies, having separate and independent officers, directors and stockholders, with no restraint on competition between them; and said companies were as independent and free from outside restraint and control as they were prior to the incorporation of the old respondent.

Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint. 145

8. The steps taken by The Hart & Hegeman Manufacturing Company, The Arrow Electric Company, The H & H Electric Company and The Arrow Manufacturing Company, resulting by way of consolidation and merger thereof in the new respondent, were as follows:

(A) At a meeting of the board of directors of The Arrow Electric Company held December 11, 1928 (after the old respondent had disposed of all its assets and voted to terminate its corporate existence and had passed into the hands of its direc- 146
tors acting as trustees in liquidation) it was voted to approve the form of agreement for the consolidation or merger of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company, and to submit said agreement to its stockholders, as required by law, for approval. A majority of its directors then executed said agreement, as provided by law.

A special meeting of the stockholders of The Arrow Electric Company was then called to be held at ten o'clock on December 31, 1928 to approve such agreement of consolidation. Notice of such meet- 147
ing was duly mailed to each holder of preferred and common stock and published once a week for three successive weeks in a daily newspaper published in Hartford.

At such special meeting of the stockholders on December 31, 1928 the agreement of consolidation or merger was duly approved by a vote of more than two-thirds of all its outstanding preferred stock and also by a vote of more than two-thirds of all its outstanding common stock, and a certificate to

148 *Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint.*

that effect was duly executed under oath by its secretary.

(B) A copy of the minutes of said special meeting of the directors of The Arrow Electric Company, held December 11, 1928, and of said special meeting of the stockholders, held December 31, 1928, is attached hereto, marked Exhibit E, and made a part hereof.

(C) At a meeting of the board of directors of
149 The Hart & Hegeman Manufacturing Company held December 11, 1928 (after the old respondent had disposed of all its assets and voted to terminate its corporate existence and had passed into the hands of its directors acting as trustees in liquidation) it was voted to approve the form of agreement for the consolidation or merger of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company, and to submit said agreement to its stockholders, as required by law, for approval. A majority of its directors then executed said agreement, as provided by law.

150 A special meeting of the stockholders of The Hart & Hegeman Manufacturing Company was then called to be held at eleven o'clock on December 31, 1928 to approve such agreement of consolidation. Notice of such meeting was duly mailed to each holder of preferred and common stock and published once a week for three successive weeks in a daily newspaper published in Hartford.

At such special meeting of the stockholders on December 31, 1928, the agreement of consolidation or merger was duly approved by a vote of more than two-thirds of all its outstanding preferred

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stock and also by a vote of more than two-thirds of all its outstanding common stock, and a certificate to that effect was duly executed under oath by its secretary.

(D) A copy of the minutes of said special meeting of the directors of The Hart & Hegeman Manufacturing Company, held December 11, 1928, and of said special meeting of the stockholders, held December 31, 1928, is attached hereto, marked Exhibit F, and made a part hereof.

152 (E) At a meeting of the board of directors of The Arrow Manufacturing Company held December 11, 1928 (after the old respondent had disposed of all its assets and voted to terminate its corporate existence and had passed into the hands of its directors acting as trustees in liquidation) it was voted to approve the form of agreement for the consolidation or merger of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company, and to submit said agreement to its stockholders, as required by law, for approval. A majority of its directors then executed said agreement, as provided by law.

153 A special meeting of the stockholders of The Arrow Manufacturing Company was then called to be held at twelve o'clock on December 31, 1928 to approve such agreement of consolidation. Notice of such meeting was duly mailed to each stockholder and published once a week for three successive weeks in a daily newspaper published in Hartford.

At such special meeting of the stockholders on December 31, 1928 the agreement of consolidation or merger was duly approved by a vote of more

than two-thirds of all its outstanding stock, which was of one class, and a certificate to that effect was duly executed under oath by its secretary..

(F) A copy of the minutes of The Arrow Manufacturing Company from its original incorporation to and through the consolidation meeting of December 31, 1928 is attached hereto, marked Exhibit G, and made a part hereof.

(G) At a meeting of the board of directors of
155 The H & H Electric Company held December 11, 1928 (after the old respondent had disposed of all its assets and voted to terminate its corporate existence and had passed into the hands of its directors acting as trustees in liquidation) it was voted to approve the form of agreement for the consolidation or merger of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company, and The H & H Electric Company, and to submit said agreement to its stockholders, as required by law, for approval. A majority of its directors then executed said agreement, as provided by law.

156 A special meeting of the stockholders of The H & H. Electric Company was then called to be held at one o'clock on December 31, 1928 to approve such agreement of consolidation. Notice of such meeting was duly mailed to each stockholder and published once a week for thre successive weeks in a daily newspaper published in Hartford.

At such special meeting of the stockholders on December 31, 1928 the agreement of consolidation or merger was duly approved by a vote of more than two-thirds of all its outstanding stock, which was of one class, and a certificate to that effect was duly executed under oath by its secretary.

Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint. 157

(H) A copy of the minutes of The H & H Electric Company from its original incorporation to and through the consolidation meeting of December 31, 1928 is attached hereto, marked Exhibit H, and made a part hereof.

(I) Such agreement of consolidation or merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company, thus approved by the stockholders of each of said four companies and bearing the certificate thereto by the secretary of each of said companies, was then filed in the office of the Secretary of the State of Connecticut and approved by him, and said agreement thereupon became immediately effective, thus creating the new respondent. A copy of such agreement of consolidation or merger, thus filed and approved, is attached hereto, marked Exhibit I, and made a part hereof. 158

(J) No corporate steps were taken by either one of the four consolidating corporations relating to the adoption of the so-called plan of reorganization and the merger of the corporations other than as set forth in the five preceding exhibits. 159

(K) The directors and stockholders of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H Electric Company met and acted separately at their several and respective meetings, as required by law, and the action taken by such directors and stockholders separately in voting to merge such corporations into the new respondent under the laws of the state of Connecticut

160 was voluntary, independent and without any direction from or agreement with the old respondent.

(L) A copy of Sections 3520 to 3524, inclusive, of the General Statutes of Connecticut, Revision of 1918, being the statute law of Connecticut relating to the merger or consolidation of any two or more corporations organized under the general law of Connecticut and carrying on business of the same or similar nature, is attached hereto, marked Exhibit J, and made a part hereof.

161 (M) At the time of the dissolution of the old respondent there were outstanding 13,333 shares, of the par value of $100 each, of the preferred stock of The Hart & Hegeman Manufacturing Company, each of said shares having a market value of approximately $106, and 18,950 shares, of the par value of $100 each, of the preferred stock of The Arrow Electric Company, each of said shares having a market value of approximately $106, all of which preferred shares were held by the public, there being at that time about 303 preferred stockholders of The Hart & Hegeman Manufacturing Company, and about 655 preferred stockholders of
162 The Arrow Electric Company, and none of such preferred shares of either company were at any time owned by the old respondent. The holders of such preferred shares of each of said two companies by a vote of more than two-thirds of all the outstanding preferred stock in each case, as required by law, voted to approve such merger or consolidation and to receive in lieu of such preferred shares held by them the equivalent number of shares of the preferred stock of the merged or consolidated corporation, most of which preferred shares are still held and outstanding.

Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint. 163

(N) The preferred stockholders of the two constituent companies aforesaid held at the time of the dissolution of the old respondent capital stock of the two constituent companies of a par value greatly in excess of the par value of the common capital stock of those companies held by the old respondent, and today the preferred stockholders of the new respondent likewise hold capital of the new respondent of a par value greatly in excess of the par value of the common stock of the new respondent.

(O) The holders of the preferred stock of the 164
two constituent companies aforesaid were in no wise party to any of the steps looking to the formation of the old respondent or looking to a distribution of its assets to the two new companies, or to the dissolution of the old respondent, and took no part in the matter of the plan of merger or consolidation until after the old respondent had distributed all its assets and had voted to dissolve.

(P) The new respondent could not have been formed without the concurrent vote of approval by the holders of more than two-thirds of all the outstanding preferred stock of each of the constituent companies. Such preferred stockholders had no 165
notice of the dissolution of the old respondent or interest therein and no notice of the proposed plan of merger or consolidation until the calls for meetings of such preferred and common stockholders of the two constituent companies were issued on December 11, 1928, as required by law, after the old respondent had distributed its assets and had voted to terminate its corporate existence.

9. Clauses (f), (g), (h), (i) and (j) of Paragraph 7 are admitted, since the statements thereof,

although brief, are substantially true, but for the purpose of showing what precise steps were taken by the corporations referred to, copies of the minutes of ~~each~~ corporation have been annexed to this Answer for explanation as above set forth. The allegation, however, in clause (g) of Paragraph 7 that the preferred stockholders of the new respondent have no power to vote except as provided by statute unless in case of default in payment of dividends on preferred stock for six quarters is not
167 true, as appears by the consolidation or merger agreement, Exhibit I, attached hereto.

10. Under date of January 11, 1929 counsel notified the Federal Trade Commission that the old respondent had distributed all its assets and had voted to terminate its corporate existence, and had filed a certificate to that effect in the office of the Secretary of the State of Connecticut, and further that the new respondent had been formed by consolidation of The Arrow Electric Company, The Arrow Manufacturing Company, The Hart & Hegeman Manufacturing Company and The H & H
168 Electric Company, copy of which letter is attached hereto, marked Exhibit K, and made part hereof. From the time of the receipt of that letter until the filing of the supplemental complaint on the 29th of June, 1929, no objection or protest was received from the Federal Trade Commission or from its chief counsel as to the dissolution of the old respondent or the formation of the new respondent.

11. Paragraph 8 of the supplemental complaint is denied, and specifically it is denied that the stocks of The Hart & Hegeman Manufacturing Company

and The Arrow Electric Company were used by the old respondent throughout the aforesaid reorganization to effect the merger and consolidation of the new respondent.

12. Paragraph 8 (a) of the supplemental complaint is denied.

13. Paragraph 8 (b) is admitted, except that the last sentence thereof is denied, and further answering said paragraph (b) this new respondent alleges that the method of distribution outlined in said 170
paragraph (b) was designed and carried out to conform to the provisions of the Revenue Act of 1928.

14. Paragraph 8 (c) is denied.

15. Paragraph 9 is denied. Further answering said paragraph, this new respondent alleges that the steps taken by the old respondent, constituted a complete compliance with the demands of the Federal Trade Commission that the respondent should cease and desist from holding shares of the constituent companies, and this new respondent further alleges that the legality of all steps taken after 171
the dissolution of the old respondent is to be judged and tested by the provisions of the Sherman Act, so-called, and this new respondent further alleges that the merger or consolidation of the four companies into the new respondent was legal and valid under all the trust laws of the United States.

16. Paragraphs 10 and 11 are denied. Further answering said paragraphs the new respondent alleges that the steps taken by the old respondent

172 *Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint.*

were not taken to oust the Federal Trade Commission but were taken, without prejudice, to comply with its demands. No one of the persons named in the proxies referred to in paragraph 10 was either a director or officer of any one of the corporations referred to in this Answer. They were independent gentlemen, heading large banking, insurance and commercial corporations, and were selected because of their representative standing in the community, as men in whom the various stockholders would
173 have the utmost confidence.

17. The Hart & Hegeman Manufacturing Company and The Arrow Electric Company were corporations of mature years existing side by side in the city of Hartford, their plants being within half a mile of each other. It was both natural, proper and for the interest of economy and to prevent waste that, in so far as their products of manufacture were concerned, raw material should be obtained from sources in common. The old respondent did not use its control of said corporations for the elimination of competition. Competition remained between them commercially as before and
174 prices in certain of the larger lines were reduced. The respective corporations sought a consolidation or merger for the purpose of meeting competition from strong competitors in the industry, to reduce waste, to effect economies, to better product and to lower prices. The sales of the consolidated company are less than 20% of the sales of the total industry in the United States doing a similar business. The merger and consolidation was a proper step and has proved to be a proper step for industry and was and is in line with the general recommendations of the Department of Commerce.

Answer of the Arrow-Hart & Hegeman Electric Company to the Supplemental Complaint.

The further prosecution of this proceeding would be an injury to the financial interests of many innocent stockholders, and instead of being an aid to competition would be a blow to the industry of manufacturing and selling electric wiring devices as a whole and an injury to the consuming public.

WHEREFORE this respondent, having fully answered the charges contained in the supplemental complaint, prays that the same may be dismissed.

Dated at Hartford, this 11th day of October, 1929.

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY,
By EDWARD R. GRIER,
President,
103 Hawthorne Street,
Hartford, Connecticut.

ARTHUR L. SHIPMAN,
CHARLES WELLES GROSS,
WALLACE W. BROWN,
Attorneys for Respondent.

178 **Exhibit A.**

ARROW-HART & HEGEMAN, INCORPORATED.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

A special meeting of the stockholders of Arrow-Hart & Hegeman, Incorporated will be held in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, on Monday, December 10, 1928, at ten o'clock in the forenoon, to confirm the vote of its Board of Directors passed at a meeting held No-
179 vember 10, 1928, a copy of which vote of said Board of Directors is as follows:

> "VOTED: That the corporate existence of this corporation be terminated and that a special meeting of the stockholders be called to be held December 10, 1928 to confirm this vote."

and to authorize the directors to distribute the assets of the corporation to its stockholders, in such manner as they may determine; and to transact any other business proper to come before such meeting.

180 Dated at Hartford, this 10th day of November, 1928.

By order of the Board of Directors,

B. C. PERKINS,
Secretary.

Exhibit A. 181

ARROW-HART & HEGEMAN, INCORPORATED

Hartford, November 10th, 1928.

To the stockholders of Arrow-Hart & Hegeman, Inc.:

The dissolution of Arrow-Hart & Hegeman, Inc. and the distribution of its assets among its stockholders have been recommended by counsel to meet the recent criticism of the Federal Trade Commission of the organization of our company and its control of the two companies, The Arrow Electric Company and The Hart & Hegeman Manufacturing 182
Company, through stock ownership.

The directors of Arrow-Hart & Hegeman, Inc. have, therefore, voted to recommend its dissolution and the distribution of its assets among its stockholders in kind. Enclosed is formal notice of meeting of stockholders to confirm such action. The entire assets of the corporation are shares of the common stock of The Arrow Electric Company and of The Hart & Hegeman Manufacturing Company. It is expected that distribution will be made of these shares in kind so that each stockholder shall receive shares of the common stock of either one or both of said companies. 183

Enclosed we hand you proxy and consent which concerns the dissolution of Arrow-Hart & Hegeman, Inc. and the distribution of its assets among you as stockholders.

The following gentlemen, stockholders of this company, have consented to act as your attorneys and proxies in the matter:

Leon P. Broadhurst, who is President of the Phoenix State Bank and Trust Company;

William R. C. Corson, who is President of the Hartford Steam Boiler Inspection and Insurance Company;

184 *Exhibit A.*

John O. Enders, who is Chairman of the Board of the Hartford National Bank and Trust Company;

Joseph R. Ensign, who is President of The Ensign-Bickford Company of Simsbury;

Philip B. Gale, who is President of the Standard Screw Company; and

Robert B. Newell, who is President of the Hartford National Bank and Trust Company.

As a three-fourths vote of the stock of this company is required to carry out this plan, please sign
185 and return this consent and proxy to the Phoenix State Bank and Trust Company, Trust Department, Hartford, Connecticut, as soon as possible, for which a reply envelope is enclosed.

We believe that upon distribution of this company's assets the directors of The Arrow Electric Company and of The Hart & Hegeman Manufacturing Company will propose to the stockholders of each company an agreement of consolidation of these two companies. Further details will be sent you upon the conclusion of the liquidation of Arrow-Hart & Hegeman, Inc. for your approval.

Much progress has been made in efficiency and
186 economy through the organization of your company and more, we are confident, can be accomplished by actual merger and consolidation of the two companies, viz: The Arrow Electric Company and The Hart & Hegeman Manufacturing Company.

Yours very truly,

EDWARD R. GRIER,
President.

SAMUEL P. WILLIAMS,
Vice-President.

Exhibit B.

187

ARROW-HART & HEGEMAN, INCORPORATED

Hartford, December 1, 1928.

To the Stockholders of Arrow-Hart & Hegeman, Incorporated.

OUTLINE OF PLAN OF REORGANIZATION

Supplementing our circular letter to you, dated November 10, 1928, we now outline to you more fully the steps in the plan of reorganization involving this company, The Arrow Electric Company 188
and The Hart & Hegeman Manufacturing Company, indicating, subject to change, the various steps which shall be taken to consummate such plan of reorganization.

It is proposed that

(a) By vote of its stockholders Arrow-Hart & Hegeman, Incorporated will transfer to a new Arrow company all the shares of the common stock of The Arrow Electric Company in exchange for all the shares of the new Arrow company which will be issued either to this company or directly to you as its stockholders in proportion to your present 189
holdings of the stock of this company. Likewise, Arrow-Hart & Hegeman, Incorporated will transfer to a new Hart & Hegeman company all the shares of the common stock of The Hart & Hegeman Manufacturing Company in exchange for all the shares of the new Hart & Hegeman company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. When this stock

190 *Exhibit B.*

of the new companies has been issued, the entire value of your present holdings will be represented by the new stock. There will, therefore, be no necessity for you to surrender the certificates of stock which you now hold in Arrow-Hart & Hegeman, Incorporated.

To authorize this first step in the plan of reorganization a special stockholders' meeting of Arrow-Hart & Hegeman, Incorporated will be held on December 6, 1928, of which a formal notice is enclosed herewith, with a form of proxy running to
191 the same six gentlemen who are your proxies for the meeting called for December 10th, which you will kindly execute and return promptly in the enclosed envelope.

(b) That when such exchange of shares in conformity to the plan of reorganization, made necessary to meet the criticism of the Federal Trade Commission, as indicated in our former letter and notice, has been consummated, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at a meeting called for December 10, 1928, or at an adjournment thereof, it is anticipated that
192 that corporation will be dissolved.

(c) That immediately thereafter a merger or consolidation of the four corporations then in existence, namely, The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow company and the new Hart & Hegeman company, will be submitted to the stockholders for approval. It is hoped that if adopted this merger or consolidation will be effective at the close of business on December 31, 1928.

193

These separate steps, as a part of one plan of reorganization, in the opinion of counsel, are desirable not only to meet the criticism of the Federal Trade Commission but also to bring the reorganization unquestionably within the provisions of the Revenue Act of 1928 in such a way that the exchange of shares will involve no tax to any stockholder. Your officers and counsel have conferred upon this point with Colonel Robert H. Montgomery, of New York, the well known authority on income tax law and procedure, and it is his opinion that this plan of reorganization under the provisions of the Revenue Act involves no taxable gain to the stockholders.

194

As above stated, it is essential that we have your prompt cooperation to effect these corporate steps. A two-thirds vote of all the stock is necessary for the meeting called for December 6th. A form of proxy is enclosed, which will authorize the gentlemen named therein to act for you in support of such a plan of reorganization above outlined and as the same may be modified with their approval. The proxy will also authorize those gentlemen to receive on your behalf the stock in the new Arrow company and in the new Hart & Hegeman company and to surrender that stock on your behalf in exchange for shares of the merged or consolidated corporation which it is expected will be organized before the close of the year. The proxy also gives them the right to execute any instruments and do any acts, sign any waivers, or take any other steps which may be necessary or advisable in their opinion to accomplish such reorganization in the best and most expeditious manner.

195

196 *Exhibit B.*

At a meeting of your directors, held November 30, 1928, it was voted to close the stock transfer books of this company from November 30, 1928, until after the adjournment of the meeting called for December 10, 1928.

Yours very truly,

EDWARD R. GRIER,
President.

197 SAMUEL P. WILLIAMS,
Vice-President.

198

Exhibit C.

199

DECEMBER 1ST, 1928

CALL OF SPECIAL MEETING

of the

STOCKHOLDERS

of

ARROW-HART & HEGEMAN, INCORPORATED

A Special Meeting of the Stockholders of Arrow-Hart & Hegeman, Incorporated will be held in the Directors' Room of the Phoenix State Bank & Trust 200
Company, No. 803 Main Street, Hartford, Connecticut, on Thursday, December 6, 1928, at 10 o'clock in the forenoon, to adopt a plan of reorganization; to authorize the officers and/or directors of this corporation to transfer the shares owned by it of the common stock of The Arrow Electric Company and of The Hart & Hegeman Manufacturing Company to a new corporation or corporations in exchange for all the shares of the capital stock of such new corporation or corporations, which new stock shall be issued either to this corporation or to its stockholders; to authorize the directors to agree to the terms and conditions of such a plan of reor- 201
ganization and exchange of stock in such manner as they may then determine, and to transact any other business proper to come before such meeting.

Dated at Hartford, this 1st day of December, 1928.

By Order of the Board of Directors,

B. C. PERKINS,
Secretary.

202 *Exhibit C.*

DECEMBER 6, 1928

MINUTES OF SPECIAL MEETING

of the

STOCKHOLDERS

of

ARROW-HART & HEGEMAN, INCORPORATED

A Special Meeting of the Stockholders of Arrow-Hart & Hegeman, Incorporated was duly held, pur-
203 suant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut (that being the corporate office of this company) on Thursday, December 6, 1928, at 10 o'clock in the forenoon.

The Secretary, Mr. B. C. Perkins, read the call of the meeting, and stated that a copy of this call was mailed on December 1st, 1928, to each stockholder of record, addressed to him at his last known address registered on the books of the company. This call was then ordered recorded with the minutes of the meeting.

The Secretary also presented an alphabetical list
204 of the stockholders of the corporation, as required by law.

Messrs. George H. Burt and George A. Chandler were then duly appointed a committee on proxies and tellers, and as such committee they reported that One Hundred Seventy Thousand Nine Hundred Seventy Eight (170,978) shares of the stock of this company issued and outstanding, all of one class, was represented by proxy at this meeting.

There was then read the complete record of the minutes of the special meeting of the Board of

Exhibit C.

Directors of this company duly held on November 30, 1928, including an outline of a plan of reorganization which was presented to that meeting and the vote of the Board of Directors approving that plan of reorganization and calling this special meeting of stockholders to consider and adopt such plan, and to authorize the exchange of shares therein provided for. A copy of the outline of the plan as presented to the directors and read at this meeting was then ordered made a part of the minutes of this meeting. 205

"The outline of the plan is as follows: 206

(a) By a vote of its stockholders Arrow-Hart & Hegeman, Incorporated will transfer to a new Arrow Company, to be known as The Arrow Manufacturing Company, all the shares of the common stock of the Arrow Electric Company in exchange for all the shares of the Arrow Manufacturing Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share, par value $5.00, for every share of Arrow-Hart & Hegeman, Inc. now held by the stockholders. Likewise, Arrow-Hart & Hegeman, Incorporated will transfer 207 to a new Hart & Hegeman Company, to be known as The H & H. Electric Company, all the shares of the common stock the The Hart & Hegeman Manufacturing Company in exchange for all the shares of the H & H Electric Company, which will be issued directly to the stockholders of Arrow-Hart &. Hegeman, Incorporated in the proportion of one share of the H & H Electric Company, par value $5.00 for each share of Arrow-Hart & Hegeman, In-

208 *Exhibit C.*

corporated now held by the stockholders. This will be done without a surrender of the shares of Arrow-Hart & Hegeman, Incorporated.

To accomplish this first step a special stockholders' meeting of Arrow-Hart & Hegeman, Incorporated will be called and held on December 6, 1928.

(b) When such exchange of shares in conformity to this plan of reorganization has been consummated prior to December 10, 1928, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and, therefore, at the meeting called for December 10, 1928, or at an adjournment thereof, that corporation may be dissolved. It will then have no assets and no liabilities, and its dissolution will be a purely formal matter.

209

(c) There will then be in existence four corporations,—The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow Manufacturing Company and the new H & H Electric Company. The corporate stock of these four companies will then be held as follows:

210

Name of Company	*Stock*			*Stockholders*
Arrow Electric Company	30,000 shs.	Com. par	$25	Arrow Mfg. Co.
	18,950 "	Pfd. "	$100	Public
Hart & Hegeman Mfg. Co.	20,000 "	Com. "	$25	H&H Elec. Co.
	13,333 "	Pfd. "	100	Public
Arrow Mfg. Co.	200,000 "	Com. "	5	Public
H & H Electric Co.	200,000 "	Com. "	5	Public

Exhibit C.

The plan provides that these four companies, all having manufacturing charters, will make an agreement for consolidation or merger by vote, in the first instance, of the Board of Directors of each of the four companies, to be dated about December 10, 1928 and to be submitted to stockholders at a meeting to be called for each corporation on December 31, 1928, at which time the agreement, if approved by the stockholders, will be effective, a particularly advantageous time at the close of the tax year. By this agreement of merger or consolidation it will result that the merged or consolidated corporation will have outstanding one class of preferred stock equal in the aggregate to the number of shares of preferred stock of Arrow Electric Company and Hart & Hegeman Manufacturing Company now outstanding, so that the public owning the preferred stock will receive one share of preferred stock, of the par value of $100, for each share of preferred stock of the Arrow Electric Company now outstanding, and one share of preferred stock for each share of preferred stock of The Hart & Hegeman Manufacturing Company now outstanding; that the common stock of the merged or consolidated corporation will be 200,000 shares, of the par value of $10, so that one share of the common stock of the merged or consolidated corporation will be issued in exchange for a unit of one share of The Arrow Manufacturing Company common, of the par value of $5, and one share of The H & H Electric Company common, par value $5, the net result on common stock being that the stockholders of Arrow-Hart & Hegeman, Incorporated will ulti-

214 *Exhibit C.*

mately hold one share of the merged or consolidated corporation, of the par value of $10, for every one share of Arrow-Hart & Hegeman, Incorporated now being held by them."

The matter was then discussed, and in that connection there was presented to the meeting a certified audit of the affairs of the company made by Messrs. Hadfield, Rothwell, Soule and Coates showing that the company had no liabilities.

The following motion was then offered by Mr. Burt and seconded by Mr. Corson:

215

VOTED: That the Plan of Reorganization submitted to and approved by the Board of Directors of this Company at their meeting on November 30, 1928, as set forth in the minutes of that meeting, be and hereby is approved and adopted;

That pursuant thereto this corporation transfer and convey to The Arrow Manufacturing Company all the holdings of this corporation in the common stock of the Arrow Electric Company, consisting of 30,000 shares (par $25 each) in exchange for all the capital stock of

216 The Arrow Manufacturing Company, consisting of 200,000 shares (par $5 each) and that said The Arrow Manufacturing Company be and it is hereby directed to issue and deliver said 200,000 shares to and in the names of the several and respective stockholders of this corporation pro rata and in the proportion of one share of The Arrow Manufacturing Company for each share of Arrow-Hart & Hegeman, Incorporated now held by them as shown by the stock books of this company, of which an attested list shall be furnished to The Arrow

Exhibit C.

Manufacturing Company by the Secretary of this company;

That pursuant thereto this corporation transfer and convey to The H & H Electric Company all the holdings of this corporation in the common stock of the Hart & Hegeman Manufacturing Company, consisting of 20,000 shares (par $25 each) in exchange for all the capital stock of The H & H Electric Company, consisting of 200,000 shares (par $5 each), and that said The H & H Electric Company be and it is hereby directed to issue and deliver said 200,000 shares to and in the names of the several and respective stockholders of this corporation pro rata and in the proportion of one share of The H & H Electric Company for each one share of Arrow-Hart & Hegeman, Incorporated now held by them as shown by the stock books of this company of which an attested list shall be furnished to The H & H Electric Company by the Secretary of this company, and

That the President of this company, or the Treasurer, be and he is hereby authorized and directed to execute and deliver all instruments necessary or convenient to carry out such exchange of shares.

The President stated that the law of Connecticut requires a vote of at least two-thirds of all the outstanding stock of the corporation for the passage of the foregoing resolutions and that a stock ballot was therefore necessary.

A stock ballot was taken and at the close of the polls the tellers reported as follows:

220 *Exhibit C.*

Total number of shares outstanding	200,000
Number of shares necessary for passage of the resolutions	133,334
Total number of shares voting in favor of the resolutions	170,978
Total number of shares voting against the resolutions	00

The President then declared the resolutions carried by a vote of more than two-thirds of all the outstanding stock of the corporation.

221 The President stated that under the plan of reorganization outlined in the communication to the stockholders of this company dated December 1, 1928 and signed by Messrs. Grier and Williams, it was desirable that the new corporation resulting from the consolidation and merger of The Arrow Manufacturing Company, The H & H Electric Company, The Arrow Electric Company and the Hart & Hegeman Manufacturing Company should be free to adopt the name of The Arrow-Hart & Hegeman Electric Company or some similar name. This company has disposed under the foregoing votes of all its assets and its directors have voted to recommend
222 to its stockholders the dissolution of the company. This action will be ratified at the stockholders' meeting to be held on December 10, 1928. The President suggested the passage of the following votes, which, on motion made by Mr. Shipman and seconded by Mr. Chase were unanimously passed:

VOTED: That this company consent to the adoption of the name The Arrow-Hart & Hegeman Electric Company or some similar name by the new corporation to come into existence from the merger and consolidation of The Arrow Manufacturing Company, The H & H Elec-

Exhibit C. 223

tric Company, The Arrow Electric Company and The Hart & Hegeman Manufacturing Company.

VOTED: That the Secretary of this company furnish to the Secretary of State of Connecticut an attested copy of the foregoing statement and vote.

The meeting then adjourned.

Attest:

BENJ. C. PERKINS
Secretary 224

I hereby certify that the foregoing is a true and correct transcript of the minutes of a special meeting of the stockholders of Arrow-Hart & Hegeman, Incorporated, duly held on December 6, 1928.

Attest:
BENJ. C. PERKINS
Secretary.

Special Meeting of Stockholders of the Arrow-Hart & Hegeman, Incorporated, December 6, 1928.
Ballot on resolutions in favor of Plan of Reorganization and exchange of shares as presented 225

Voted Yes
170,978 Shares represented by proxies

ROBERT B. NEWELL
JOSEPH R. ENSIGN
PHILIP B. GALE
WM. R. C. CORSON
LEON P. BROADHURST
Proxies for Holders of Shares of the above number.

226 *Exhibit C.*

DECEMBER 10TH, 1928

MINUTES OF SPECIAL MEETING

of the

STOCKHOLDERS

of

ARROW-HART & HEGEMAN, INCORPORATED

A Special Meeting of the Stockholders of Arrow-Hart & Hegeman, Incorporated was duly held, pur-
227 suant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, (that being the corporate office of the corporation) on Monday, December 10, 1928, at 11 o'clock in the forenoon.

The call for the meeting was read and ordered recorded with the minutes of the meeting.

The Secretary made return that a copy of this call was mailed on November 10, 1928, thirty days in advance of the meeting, to each stockholder of record, addressed to him at his last known address registered on the books of the company, and that a copy of such call was published once a week for
228 four weeks next preceding such meeting in the Hartford Daily Courant, a newspaper of this State, having a circulation in the Town of Hartford, where this corporation is located. He also produced a publisher's affidavit of the Hartford Courant as to the publication.

The Secretary also presented an alphabetical list of the stockholders of the corporation as required by law.

Messrs. George H. Burt and Monroe Guett were then duly appointed a committee on proxies and

Exhibit C. 229

tellers and as such committee they reported that One Hundred Eighty Six Thousand Eight Hundred Fifty-Six (186,856) shares of the stock of this company issued and outstanding, all of one class, was represented by proxy at this meeting.

There was then read to the meeting a copy of the vote passed by the Board of Directors of this company at their meeting held on November 10, 1928, a copy of which vote is as follows:

"VOTED: That the corporate existence of this corporation be terminated and that a special meeting of the stockholders be called, to be 230
held December 10, 1928, to confirm this vote."

It was further stated that in pursuance of the Plan of reorganization this company, pursuant to a vote of the stockholders at their meeting held December 6, 1928, has transferred to The Arrow Manufacturing Company all the holdings of this corporation in the common stock of The Arrow Electric Company, consisting of Thirty Thousand (30,000) shares, par value $25.00 each, in exchange for all the capital stock of The Arrow Manufacturing Company, consisting of 200,000 shares of the par value of $5.00 each, which have been issued to 231
and in the names of the several and respective stockholders of this corporation, pro rata, and in the proportion of one share of Arrow Manufacturing Company for each one share of Arrow-Hart & Hegeman, Incorporated now held by them, as shown by the stock lists of this company.

And that likewise this company has transferred to The H & H Electric Company all the holdings of this corporation in the common stock of the Hart & Hegeman Manufacturing Company, consisting of 20,000 shares, par value $25.00 each, in ex-

232 *Exhibit C.*

change for all the capital stock of The H & H Electric Company, consisting of 200,000 shares of the par value of $5.00 each, which have been issued to and in the names of the several and respective stockholders of this corporation pro rata and in the proportion of one share of the H & H Electric Company for each one share of Arrow-Hart & Hegeman, Incorporated so held by them, as shown by the stock lists of this company;

And that at the meeting on December 6th there was presented a certified audit of the condition of
233 this company made by Messrs. Hadfield, Rothwell, Soule & Coates, showing that all the assets of this corporation at that time consisted of the shares of the common stock of The Arrow Electric Company and all the shares of the common stock of The Hart & Hegeman Manufacturing Company, and that this company had no liabilities. Having now transferred all its assets, it is now the fact that this company has no assets and no liabilities and that, as these steps were taken pursuant to a Plan of Reorganization approved by the stockholders of this company on December 6, 1928, there is no further reason for the continued corporate existence of this
234 company.

The matter was then discussed and the following motion was then offered:

> VOTED: That the action of the directors of this corporation in voting to terminate its corporate existence be and the same is hereby confirmed.

The President stated that a three-fourths vote of all the outstanding stock was necessary for the passage of the foregoing resolution and that a stock vote was therefore necessary.

Exhibit C.

235

A stock ballot was taken and at the close of the polls the tellers reported as follows:

Total number of shares outstanding	200,000
Number of shares necessary for the passage of the resolution	150,000
Total number of shares voting in favor of the resolution	186,856
Total number of shares voting against the resolution	00

The President then declared the resolution carried by a vote of more than three-fourths of all the outstanding stock of this corporation. 236

It was then on motion made by Mr. Gross and seconded by Mr. Gale unanimously

VOTED: That the directors make and file in the office of the Secretary of State the necessary preliminary certificate of dissolution.

A form of such certificate was then presented and a majority of the directors executed the same.

On motion offered by Mr. Corson, seconded by Mr. Burt, it was

VOTED: That this company consent to the adoption of the name The Arrow-Hart & Hegeman Electric Company or some similar name by the new corporation to come into existence from the merger and consolidation of The Arrow Manufacturing Company, The H & H Electric Company, The Arrow Electric Company and The Hart & Hegeman Manufacturing Company. 237

The meeting then adjourned.

Attest:

BENJ. C. PERKINS
Secretary.

238 *Exhibit C.*

Special Meeting of Stockholders of Arrow-Hart & Hegeman, Incorporated, December 10, 1928.

Ballot in favor of resolution to confirm the vote of the Board of Directors, November 10, 1928 to terminate the corporate existence of this Company

Voted Yes
186,856 shares represented by proxies

L. P. BROADHURST
WM R. C. CORSON
239 JOSEPH R. ENSIGN
PHILIP B. GALE
JOHN O. ENDERS
ROBERT B. NEWELL
Proxies for Holders of Shares of the above number.

240

Exhibit D.

241

STATE OF CONNECTICUT,
Office of the Secretary.

FINAL CERTIFICATE OF DISSOLUTION

of

ARROW-HART & HEGEMAN, INCORPORATED

We, the undersigned, a majority of the directors of Arrow-Hart & Hegeman, Incorporated, a corporation organized under the statute laws of the State of Connecticut and located in the Town of Hartford in said State, acting herein as trustees to close up 242
the business of said corporation under the provisions of said statute laws,

HEREBY CERTIFY, that we have completed our duties as prescribed by Section 3447 of the Revised Statutes of 1918, in winding up the affairs of said corporation, and we further certify that at the time said corporation voted to terminate its corporate existence it had no assets and that no claims against it have been presented to us. There were therefore no assets to sell or collect and no assets to distribute.

Dated at Hartford, this 11th day of April, 1929. 243

EDWARD R. GRIER
SAMUEL P. WILLIAMS
MONROE GUETT
CHAS. E. CHASE
DANIEL J. GLAZIER
GEO. H. BURT
ARTHUR P. DAY
G. S. STEVENSON
A Majority of the Directors
acting as Trustees.

244 *Exhibit D.*

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss.:

Hartford, April 11—1929.

Personally appeared Edward R. Grier, Samuel P. Williams, Monroe Guett, Chas. E. Chase, Daniel J. Glazier, Geo. H. Burt, Arthur P. Day, G. S. Stevenson being a majority of the directors, acting as trustees, of Arrow-Hart & Hegeman, Incorporated, and made oath to the truth of the foregoing
245 certificate by them signed, before me

MAE. J. LILLIE
Notary Public

(Seal)

Approved Apr. 11, 1929

William L. Higgins, Secretary
By Elmer H. Lounsbury

246

Exhibit E.

247

DECEMBER 8, 1928

CALL OF SPECIAL MEETING

of the

DIRECTORS OF

THE ARROW ELECTRIC COMPANY

A Special Meeting of the Board of Directors of The Arrow Electric Company will be held at the office of the Phoenix State Bank & Trust Company, No. 803 Main Street, on Tuesday, December 11th, 248
1928 at two o'clock in the afternoon to consider and approve an agreement for the consolidation or merger of—

The Arrow Electric Company
The Hart & Hegeman Manufacturing Company
The Arrow Manufacturing Company
The H. & H. Electric Company

pursuant to the plan of reorganization, of which you have knowledge; and to transact any other business incidental to the same matter.

Your presence is earnestly desired as the agree- 249
ment, if approved, must be signed by at least a majority of the Board.

By order of the President.

E. BOSWORTH GRIER,
Assistant Secretary.

250 *Exhibit E.*

DECEMBER 11TH, 1928

MINUTES OF SPECIAL MEETING

of the

DIRECTORS

of

THE ARROW ELECTRIC COMPANY

At a special meeting of the Board of Directors of the Arrow Electric Company held at the office of
251 Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, on Tuesday, December 11, 1928 at two o'clock P. M., pursuant to the foregoing call, the following directors were present: Messrs. ier, Perkins, Glazier, Ten Eyck, Pond and Shipn.

The President stated that the meeting was called to consider and act upon a proposed agreement for the consolidation or merger of this company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and the H & H Electric Company, pursuant to a plan of reorganization, an outline of which is set forth in the minutes
252 of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated held November 30, 1928, a copy of which minutes was presented to this meeting and which is annexed hereto for reference.

He further presented written form of agreement of consolidation or merger of said companies, a copy of which is annexed to these minutes. The same was fully considered and discussed. On motion duly seconded the form of said agreement was approved and signed by the individual directors of the company under its corporate seal.

Exhibit E.

Thereupon on motion duly seconded it was unanimously VOTED: To submit said agreement to the stockholders of this company and that a meeting thereof be called for the purpose of considering the same, to be held at the office of Phoenix State Bank & Trust Company, No. 803 Main Street, Hartford, on Monday, December 31, 1928 at ten o'clock A. M., and that notice of the time, place and object of such meeting be mailed forthwith to the last known post office address of each of the stockholders of this corporation as on file with this company, and that such notice be published once in each week for three successive weeks in the Hartford Times.

Forms of call for said meeting, circular letter and proxy to be inclosed therewith were presented and the same were severally approved.

On motion duly made and seconded the following vote was passed:

VOTED: That Messrs. Grier, Glazier and Perkins be and they hereby are appointed an investment committee of this Board who are hereby authorized until further order of this Board to purchase, sell and exchange property, securities and investments which they may deem for the advantage of the surplus funds of the company, and to invest and reinvest the proceeds of sales of the same at their discretion.

The President reported that a meeting of the stockholders of the Hart & Hegeman Manufacturing Company would be held on December 31, 1928

256 *Exhibit E.*

for the purpose of considering said agreement of consolidation and merger. It was thereupon unanimously voted that the executive officers of this company or any one of them be and they hereby are authorized to vote any and all stock of said The Hart & Hegeman Manufacturing Company that may be held in the treasury of this company in favor of resolution approving such merger and consolidation.

No further business appearing, the meeting thereupon adjourned.

257

CHARLES A. TEN EYCK,
Secretary.

NOVEMBER 30TH, 1928

MINUTES OF THE SPECIAL MEETING

of the

BOARD OF DIRECTORS

of

258 ARROW-HART & HEGEMAN, INCORPORATED

A special meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated was duly held, pursuant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, 803 Main Street, Hartford, Connecticut, on Friday, November 30, 1928 at 4 o'clock in the afternoon.

The following directors were present, namely, Messrs. Grier, Burt, Chase, Day, Glazier, Guett, Perkins, Stevenson and Williams.

Exhibit E.

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There were also present the Companies' Counsel, Messrs. Arthur L. Shipman and Charles Welles Gross.

The President reported that since the last meeting of this Board on November 10, 1928, the officers and counsel have been at work upon the formulation of the plan of reorganization and have considered the matter both from the viewpoint of satisfying the criticism of the Federal Trade Commission and of meeting the income tax situation. Mr. Arthur Randall, C. P. A. of this City has been of great assistance to your officers and counsel in suggesting and in working out the details of the plan 260
hereinafter set forth. They have also conferred with Colonel Robert H. Montgomery of New York, the well known authority on Income Tax Law and Procedure, and have received from Colonel Montgomery an opinion, dated November 27, 1928, that the plan outlined in that opinion will involve no taxable gain either to the corporation or its stockholders at this time.

The Outline of the plan is as follows:

(a) By vote of its stockholders Arrow-Hart & Hegeman, Incorporated will transfer to a new Arrow Company, to be known as the Ar- 261
row Manufacturing Company, all the shares of the common stock of the Arrow Electric Company in exchange for all the shares of the Arrow Manufacturing Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share, par value $5.00 for every share of Arrow-Hart & Hegeman, Inc., now held by the stockholders. Likewise, Arrow-Hart & Hegeman, Incorporated, will trans-

262 *Exhibit E.*

fer to a new Hart & Hegeman Company, to be known as The H & H Electric Company, all the shares of the common stock of the Hart & Hegeman Manufacturing Company in exchange for all the shares of the H & H Electric Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share of The H & H Electric Company, par value $5.00 for each share of Arrow-Hart & Hegeman, Incorporated now held by the stockholders. This
263 will be done without a surrender of the shares of Arrow-Hart & Hegeman, Incorporated.

To accomplish this first step a special stockholders' meeting of Arrow-Hart & Hegeman, Incorporated, will be called and held on December 6, 1928.

(b) When such exchange of shares in conformity to this plan of reorganization has been consummated prior to December 10, 1928, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and, therefore, at the meeting called for December 10, 1928, or at an adjournment thereof that corporation may be dis-
264 solved. It will then have no assets and no liabilities, and its dissolution will be a purely formal matter.

(c) There will then be in existence four corporations,—The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow Manufacturing Company and the new H & H Electric Company. The corporate stock of these four companies will then be as follows:

Exhibit E.

Name of Company	*Stock*			*Stockholders*
Arrow Electric Company	30,000 shs.	Com. par.	$25	Arrow Mfg. Co.
	18,950 "	Pfd. "	100	Public
Hart & Hegeman Mfg. Co.	20,000 "	Com. "	25	H&H Elec. Co.
	13,333 "	Pfd. "	100	Public
Arrow Mfg. Company	200,000 "	Com. "	5	Public
H & H Electric Co.	200,000 "	Com. "	5	Public

The plan provides that these four companies, all having manufacturing charters, will make an agreement for consolidation or merger by vote, in the first instance, of the Board of Directors of each of the four companies, to be dated about December 10, 1928, and to be submitted to stockholders at a meeting to be called for each corporation on December 31, 1928, at which time the agreement, if approved by the stockholders will be effective, a particularly advantageous time as the close of the tax year. By this agreement of merger or consolidation it will result that the merger or consolidated corporation will have outstanding one class of preferred stock equal in the aggregate to the number of shares of preferred stock of Arrow Electric Company and Hart & Hegeman Manufacturing Company now outstanding, so that the public owning the preferred stock will receive one share of preferred stock, of the par value of $100 for each share of preferred stock of the Arrow Electric Company now outstanding and one share of preferred stock for each share of preferred stock of the Hart & Hegeman Manufacturing Company now outstanding; that the common stock of the merged or consolidated corporation will be 200,000 shares, of the par value of $10 so that one share of

268 *Exhibit E.*

the common stock of the merged or consolidated corporation will be issued in exchange for a unit of one share of the Arrow Manufacturing Company, common, of the par value of $5, and one share of The H & H Electric Company common, par value $5, the net result on common stock being that the stockholders of Arrow-Hart & Hegeman Incorporated will ultimately hold one share of the merged or consolidated corporation, of the par value of $10 for every one share of Arrow-Hart & Hegeman, Incorporated now held by them.

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The President further reported that, to accomplish this entire plan of reorganization before the close of the calendar year, it is necessary that notices for such a meeting be issued forthwith, to be held December 6th, and in order that these notices may be printed and be issued tomorrow, December 1st, counsel have approved a form of letter to the stockholders of Arrow-Hart & Hegeman, Incorporated, a form of proxy running to the same six gentlemen who have been named in the proxy for the meeting of December 10th, and a form of call for the meeting all of which he then submitted for consideration and approval by this meeting.

270

The matter was then discussed and it was then, on motion made by Mr. Burt and seconded by Mr. Chase,

VOTED: That the plan of reorganization as outlined by the President be approved by this Board and that a special meeting of the stockholders be called for December 6, 1928, to consider and adopt such plan and to authorize the exchange of shares therein provided for.

Exhibit E.

On motion made by Mr. Chase and seconded by Mr. Stevenson it was further

VOTED: That the form of the call for such meeting, the form of Power of Attorney Consent and proxy submitted and the form of letter to be sent to stockholders, signed by Mr. Grier, as President and Mr. Williams, as Vice President, be and they are hereby approved.

In order to prepare papers for the carrying out of such plan, if adopted, and in order to expedite the voting at both meetings on December 6th and December 10th by proxy, it was on motion made by Mr. Day and seconded by Mr. Burt:

VOTED: That in accordance with the by-laws of this company, the stock transfer books of this company be closed from this 30th day of November, 1928, until the final adjournment of the stockholders' meeting called for December 10, 1928.

The meeting adjourned at 5:30 o'clock P. M.

Attest:

Secretary.

274 *Exhibit E.*

DECEMBER 31, 1928

MINUTES OF SPECIAL MEETING

of the

STOCKHOLDERS

of

THE ARROW ELECTRIC COMPANY

A Special meeting of the Stockholders of the Arrow Electric Company was duly held, pursuant to
275 notice, in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, on Monday, December 31, 1928, at 10 o'clock in the forenoon.

The call for the meeting was read and ordered recorded with the minutes of the meeting.

The Assistant Secretary made return that a copy of this call was mailed on December 11, 1928, twenty days in advance of the meeting, to each preferred and common stockholder of record, addressed to him at his last known address registered on the books of the Company, and that a copy of such call was published once in each week for three
276 successive weeks preceding such meeting in the Hartford Daily Times, a newspaper of this city, having a circulation in the Town of Hartord, in which said corporation is located. He also produced a publisher's affidavit from the Hartford Times, showing the publication.

The Assistant Secretary also presented alphabetical lists of the stockholders of the corporation, both preferred and common as required by law.

Messrs. B. C. Perkins and H. C. Pond were then duly appointed a committee on proxies and

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tellers, and as such committee reported that 16,026 shares of the preferred stock of this company issued and outstanding were represented in person or by proxy at this meeting, and that 30,000 shares of the common stock of this company issued and outstanding were also represented at this meeting.

The minutes of a special meeting of the Directors of this company, duly held on December 11, 1928, were then read, showing the action of the Board of Directors in executing an agreement, entitled "Agreement of Consolidation or merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company", dated December 11, 1928. An original of this agreement signed by a majority of the directors of each of the four companies, parties to the agreement, was then presented to the meeting.

278

The President stated that this agreement for the consolidation or merger of the four corporations named was the final step in the consummation of a Plan of Reorganization which is set out at length in the minutes of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 30, 1928, and approved by that Board at that time, and a copy of which minutes is attached to the minutes of a meeting of the Board of Directors of this company held December 11, 1928. It was then further stated that, in pursuance of that plan and in accordance with the vote of the stockholders of Arrow-Hart & Hegeman, Incorporated, that company transferred to The Arrow Manufacturing Company all the common stock of The Arrow Electric Company in exchange for all the capital stock of The Arrow Manufacturing Company which was issued to the stockholders of

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280 *Exhibit E.*

Arrow-Hart & Hegeman, Incorporated, as outlined in that plan; and that likewise Arrow-Hart & Hegeman, Incorporated had transferred to the H. & H. Electric Company all the common stock of The Hart & Hegeman Manufacturing Company in exchange for all the capital stock of the H. & H. Electric Company which was issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, thus carrying out paragraph (a) of that plan;

That after such exchange of shares, in conformity to such Plan of Reorganization, had been consummated the stockholders of Arrow-Hart & Hegeman,
281 Incorporated, at a meeting held December 10, 1928, voted to dissolve the corporate existence of that corporation, thus carrying out paragraph (b) of that plan;

And that now, in conformity to paragraph (c) of that Plan of Reorganization, the directors of the four companies named in the agreement had agreed upon the consolidation or merger of the four companies, under which one share of the preferred stock of the consolidated corporation will be issued in lieu of each one share of preferred stock of The Arrow Electric Company, and one share of the
282 preferred stock of the consolidated corporation will be issued in lieu of each one share of the preferred stock of The Hart & Hegeman Manufacturing Company, and the common stock of the consolidated or merged corporation consisting of 200,000 shares, of the par value of $10.00 each, will be issued in the following proportions:

One-half of one share, in lieu of one share of the common stock of The Arrow Manufacturing Company, of the par value of $5.00 each, and one-half of one share in lieu of one share of the common

stock of the H. & H. Electric Company, of the par value of $5.00 each.

The matter was then discussed and the following motion was then offered by Mr. Corson and seconded by Mr. Broadhurst:

VOTED: That the agreement entitled, "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and the H. & H. Electric Company," dated December 11, 1928, and executed by a majority of the directors of each of such four corporations 284 under the corporate seals of the respective corporations, be and the same is hereby ratified and approved, and the officers of this company be and they are hereby authorized to take the necessary steps to have such agreement approved by the Secretary of State of Connecticut and to consummate such consolidation.

The President stated that under the provisions of Section 3522 of the General Statutes of Connecticut, such agreement to be effective must be approved by a stock vote of at least two-thirds of all the outstanding stock of each class of each of the four companies. Accordingly, a stock vote was 285 had and the tellers reported as follows:

PREFERRED STOCK.

Total number of shares outstanding	18,950
Number of shares necessary for passage of the vote	12,634
Number of shares voting to approve	16,026
Number of shares voting not to approve	0

286 *Exhibit E.*

COMMON STOCK.

Total number of shares outstanding	30,000
Number of shares necessary for passage	20,000
Number of shares voting to approve	30,000
Number of shares voting not to approve	0

The President then declared the resolution to approve the Agreement of Consolidation or Merger had been passed and the agreement approved by a vote of more than two-thirds of all the outstanding stock of each class of this corporation.

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It was then, on motion duly made by Mr. Ensign and seconded by Mr. Newell, unanimously

VOTED: That the Secretary, or Assistant Secretary, of this corporation be and he is hereby authorized to execute the certificate attached to the Agreement of Consolidation or Merger, showing the action taken this day by the stockholders and to affix the seal of this corporation thereto.

The meeting then adjourned.

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Attest:

E. BOSWORTH GRIER,
Assistant Secretary.

Exhibit E.

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THE ARROW ELECTRIC COMPANY.

A Special Meeting of the preferred and common Stockholders of the Arrow Electric Company will be held in the Directors' Room of the Phoenix State Bank and Trust Compar No. 803 Main Street, Hartford, Connecticut, on December 31, 1928, at 10 o'clock in the forenoon, to consider and act upon the question of approving an agreement for the consolidation and merger of this corporation with the Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and the H. & H. Electric Company, drawn pur- 290
suant to a Plan of Reorganization, which agreement has been approved by votes of the Board of Directors of each of the four Companies, and to transact any other business proper to come before such meeting.

Copies of the consolidation agreement are on file at the office of this company and at the Trust Department of the Phoenix State Bank and Trust Company for inspection by any stockholder prior to such meeting.

Dated at Hartford, this 11th day of December, 1928.

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By order of the Board of Directors,

E. BOSWORTH GRIER,
Assistant Secretary.

292 *Exhibit E.*

A copy of this Call was mailed on December 11, 1928, twenty days in advance of the meeting, to each preferred and common stockholder of record, addressed to him at his last known address registered on the books of the Company, and a copy was published once in each week for three successive weeks preceding this meeting in the Hartford Daily Times, a newspaper of this City, having a circulation in the Town of Hartford, in which this corporation is located.

E. BOSWORTH-GRIER,
293 Ass't. Secty.

Hartford, Conn., December 10, 1928.

This is to certify that at a meeting of the stockholders of Arrow-Hart & Hegeman, Incorporated, duly warned and held on the 10th day of December, 1928, the following vote was passed:

VOTED: That this company consent to the adoption of the name The Arrow-Hart & Hegeman Electric Company or some similar name
294 by the new corporation to come into existence from the merger and consolidation of The Arrow Manufacturing Company, The H. & H. Electric Company, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company.

Attest:
BENJ. C. PERKINS (SEAL)
Secretary

Exhibit E. 295

BALLOT

Special Meeting of Stockholders of The Arrow Electric Company, December 31, 1928.

Ballott to approve the "Agreement for the Consolidation or Merger between the Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company".

Voted Yes

30,000 Shares COMMON STOCK 296

THE ARROW MANUFACTURING COMPANY
EDWARD R. GRIER
Prest. & Treas.
Authorized Agent.

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298 *Exhibit E.*

BALLOT

Special Meeting of Stockholders of the Arrow Electric Company, December 31, 1928.

Ballot to approve the "Agreement for the Consolidation or Merger between the Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and the H & H Electric Company".

Voted Yes

299 16026 shares represented by proxies for the PREFERRED STOCK.

L. P. BROADHURST.
WM. R. C. CORSON
JOSEPH R. ENSIGN
P. B. GALE
J. O. ENDERS
ROBERT B. NEWELL
Proxies for Holders of Shares of the above number.

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Exhibit F.

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December 8, 1928.

Mr. Samuel P. Williams,
Hartford, Conn.

Dear Sir:

A special meeting of the Board of Directors of The Hart & Hegeman Manufacturing Company will be held at the office of the Phoenix State Bank and Trust Company, #803 Main Street, on Tuesday, December 11, 1928, at 2 o'clock in the afternoon, to consider and approve the agreement for consolidation or merger of:

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The Arrow Electric Company
The Hart & Hegeman Manufacturing Company
The Arrow Manufacturing Company
The H & H Electric Company

pursuant to the plan of reorganization of which you have knowledge; and to transact any other business incidental to the same matter.

Your presence is earnestly desired as the agreement, if approved, must be signed by at least a majority of the Board.

303

S. P. WILLIAMS,
President.

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Exhibit F.

MINUTES OF SPECIAL MEETING OF THE BOARD OF DIRECTORS

of

THE HART & HEGEMAN MANUFACTURING COMPANY

At a special meeting of the Board of Directors of The Hart & Hegeman Manufacturing Company held at the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, on Tuesday, December 11, 1928, at 2:00 o'clock P. M., pursuant to the foregoing call, the following directors were present.: Messrs. Williams, Burt, Cook, Buell and Gross.

305

The President stated that the meeting was called to consider and act upon a proposed agreement for the consolidation or merger of this company, The Arrow Electric Company, The H & H Electric Company and The Arrow Manufacturing Company, pursuant to a plan of reorganization, an outline of which is set forth in the minutes of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 30, 1928, a copy of which minutes was presented to this meeting and which is annexed hereto for reference.

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He further presented written form of agreement of consolidation or merger of said companies, copy of which is annexed to these minutes. The same was fully considered and discussed. On motion duly seconded the form of said agreement was approved and signed by the individual directors of the company under its corporate seal.

Thereupon on motion duly seconded it was unanimously voted to submit said agreement to the stockholders of this company and that a meeting thereof

Exhibit F.

be called for the purpose of considering the same, to be held at the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, on Monday, December 31, 1928, at 11:00 o'clock A. M., and that notice of the time, place and object of such meeting be mailed forthwith to the last known post office address of each of the stockholders of this corporation as on file with this company, and that such notice be published once in each week for three successive weeks in the Hartford Times.

Forms of call for said meeting, circular letter and proxy to be inclosed therewith were presented and the same were severally approved.

On motion duly made and seconded the following vote was passed:

VOTED: That Messrs. Williams, Burt and Buell be and they hereby are appointed an investment committee of this Board, who are hereby authorized until further order of this Board to purchase, sell and exchange property, securities and investments which they may deem for the advantage of the surplus funds of the company, and to invest and reinvest the proceeds of sales of the same at their discretion.

The President reported that a meeting of the stockholders of The Arrow Electric Company would be held on December 31, 1928 for the purpose of considering said agreement of consolidation and merger. It was thereupon unanimously voted that the executive officers of this company or any one of them be and they hereby are authorized to vote any and all stock of said The Arrow Elec-

310 *Exhibit F.*

tric Company that may be held in the treasury of this company in favor of resolution approving such merger and consolidation.

No further business appearing, the meeting thereupon adjourned.

ROBERT C. BUELL,
Secretary.

NOVEMBER 30TH, 1928

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MINUTES OF SPECIAL MEETING

of the

BOARD OF DIRECTORS

of

ARROW-HART & HEGEMAN, INCORPORATED

A special meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated was duly held, pursuant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company,
312 803 Main Street, Hartford, Connecticut, on Friday, November 30, 1928 at 4 o'clock in the afternoon.

The following directors were present, namely, Messrs. Grier, Burt, Chase, Day, Glazier, Guett, Perkins, Stevenson and Williams.

There were also present the Companies' Counsel, Messrs. Arthur L. Shipman and Charles Welles Gross.

The President reported that since the last meeting of this Board on November 10, 1928, the officers and counsel have been at work upon the for-

Exhibit F.

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mulation of the plan of reorganization and have considered the matter both from the viewpoint of satisfying the criticism of the Federal Trade Commission and of meeting the income tax situation. Mr. Arthur Randall, C. P. A. of this City has been of great assistance to your officers and counsel in suggesting and in working out the details of the plan hereinafter set forth. They have also conferred with Colonel Robert H. Montgomery of New York, the well known authority on Income Tax Law and Procedure, and have received from Colonel Montgomery an opinion, dated November 27, 1928, 314
that the plan outlined in that opinion will involve no taxable gain either to the corporation or its stockholders at this time.

The Outline of the plan is as follows:

(a) By vote of its stockholders Arrow-Hart & Hegeman, Incorporated will transfer to a new Arrow Company, to be known as The Arrow Manufacturing Company, all the shares of the common stock of the Arrow Electric Company in exchange for all the shares of the Arrow Manufacturing Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share, par value $5.00 for 315
every share of Arrow-Hart & Hegeman, Inc., now held by the stockholders. Likewise, Arrow-Hart & Hegeman, Incorporated, will transfer to a new Hart & Hegeman Company, to be known as The H & H Electric Company, all the shares of the common stock of the Hart & Hegeman Manufacturing Company in exchange for all the shares of the H & H Electric Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share of The

H & H Electric Company, par value $5.00 for each share of Arrow-Hart & Hegeman, Incorporated now held by the stockholders. This will be done without a surrender of the shares of Arrow-Hart & Hegeman, Incorporated.

To accomplish this first step a special stockholders' meeting of Arrow-Hart & Hegeman, Incorporated will be called and held on December 6, 1928.

(b) When such exchange of shares in conformity to this plan of reorganization has been consummated prior to December 10, 1928, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and, therefore, at the meeting called for December 10, 1928, or at an adjournment thereof, that corporation may be dissolved. It will then have no assets and no liabilities, and its dissolution will be a purely formal matter.

(c) There will then be in existence four corporations—The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow Manufacturing Company and the new H & H Electric Company. The corporate stock of these four companies will then be as follows:

Name of Company	*Stock*				*Stockholders*
Arrow Electric Company	30,000	shares	common	par $25	Arrow Mfg. C
	18,950	"	pfd.	" 100	Public
Hart & Hegeman Mfg. Co.	20,000	"	common	" 25	H & H Elec. C
	13,333	"	pfd.	" 100	Public
Arrow Mfg. Company	200,000	"	common	" 5	Public
H & H Electric Company	200,000	"	common	" 5	Public

The plan provides that these four companies, all having manufacturing charters, will make an agreement for consolidation or merger by vote, in the

first instance, of the Board of Directors of each of the four companies, to be dated about December 10, 1928, and to be submitted to stockholders at a meeting to be called for each corporation on December 31, 1928, at which time the agreement, if approved by the stockholders, will be effective, a particularly advantageous time as the close of the tax year. By this agreement of merger or consolidation it will result that the merger or consolidated corporations will have outstanding one class of preferred stock equal in the aggregate to the number of shares of preferred stock of Arrow Electric Company and Hart & Hegeman Manufacturing Company now outstanding, so that the public owning the preferred stock will receive one share of preferred stock, of the par value of $100 for each share of preferred stock of The Arrow Electric Company now outstanding, and one share of preferred stock for each share of preferred stock of The Hart & Hegeman Manufacturing Company now outstanding; that the common stock of the merged or consolidated corporation will be 200,000 shares, of the par value of $10 so that one share of the common stock of the merged or consolidated corporation will be issued in exchange for a unit of one share of The Arrow Manufacturing Company common, of the par value of $5, and one share of The H & H Electric Company common, par value $5, the net result on common stock being that the stockholders of Arrow-Hart & Hegeman, Incorporated will ultimately hold one share of the merged or consolidated corporation, of the par value of $10 for every one share of Arrow-Hart & Hegeman, Incorporated now held by them.

The President further reported that, to accomplish this entire plan of reorganization before the

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close of the calendar year, it is necessary that notices for such meeting be issued forthwith, to be held December 6th, and in order that these notices may be printed and be issued tomorrow, December 1st, counsel have approved a form of letter to the stockholders of Arrow-Hart & Hegeman, Incorporated, a form of proxy running to the same six gentlemen who have been named in the proxy for the meeting of December 10th, and a form of call for the meeting, all of which he then submitted for consideration and approval of this meeting.

323 The matter was then discussed and it was then, on motion made by Mr. Burt and seconded by Mr. Chase,

VOTED: That the plan of reorganization as outlined by the President be approved by this Board and that a special meeting of stockholders be called for December 6, 1928, to consider and adopt such plan and to authorize the exchange of shares therein provided for.

On motion made by Mr. Chase and seconded by Mr. Stevenson it was further

324 VOTED: That the form of the call for such meeting, the form of Power of Attorney Consent and proxy submitted and the form of letter to be sent to stockholders, signed by Mr. Grier, as President and Mr. Williams, as Vice President, be and they are hereby approved.

In order to prepare papers for the carrying out of such plan, if adopted, and in order to expedite the voting at both meetings on December 6th and December 10th by proxy, it was on motion made by Mr. Day and seconded by Mr. Burt

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VOTED: That in accordance with the by-laws of this company the stock transfer books of this company be closed from this 30th day of November, 1928, until the final adjournment of the stockholders' meeting called for December 10, 1928.

The meeting adjourned at 5:30 o'clock P. M.

Attest:

Secretary.

326

A Special Meeting of the Stockholders of The Hart & Hegeman Manufacturing Company was duly held, pursuant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, on Monday, December 31, 1928, at 11 o'clock in the forenoon.

The call for the meeting was read and ordered recorded with the minutes of the meeting.

The Secretary made return that a copy of this call was mailed on December 11, 1928, twenty days in advance of the meeting, to each preferred and 327
common stockholder of record, addressed to him at his last known address registered on the books of the company, and that a copy of such call was published once in each week for three successive weeks preceding such meeting in the Hartford Daily Times, a newspaper of this city, having a circulation in the Town of Hartford, in which said corporation is located. He also produced a publisher's affidavit from the Hartford Times, showing the publication.

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The Secretary also presented alphabetical lists of the stockholders of the corporation, both preferred and common, as required by law.

Messrs. Burt and Bunce were then duly appointed a committee on proxies and tellers, and as such committee reported that 11,522 shares of the preferred stock of this company issued and outstanding were represented in person or by proxy at this meeting, and that 20,000 shares of the common stock of this company issued and outstanding were also represented at this meeting.

329 The minutes of a special meeting of the Directors of this company, duly held on December 11, 1928, were then read, showing the action of the Board of Directors in executing an agreement, entitled "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company", dated December 11, 1928. An original of this agreement signed by a majority of the directors of each of the four companies, parties to the agreement, with a certificate attached showing that such merger or consolidation had been duly approved at
330 a stockholders' meeting of The Arrow Electric Company, was then presented to the meeting.

The President stated that this agreement for the consolidation or merger of the four corporations named as the final step in the consummation of a Plan of Reorganization which is set out at length in the minutes of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 30, 1928, and approved by that Board at that time, and a copy of which minutes is attached to the minutes of a meeting of the Board of Directors of this company held December 11, 1928.

Exhibit F.

It was then further stated that, in pursuance of that plan and in accordance with the vote of the stockholders of Arrow-Hart & Hegeman, Incorporated, that company transferred to The Arrow Manufacturing Company all the common stock of The Arrow Electric Company in exchange for all the capital stock of the Arrow Manufacturing Company which was issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, as outlined in that plan; and that likewise Arrow-Hart & Hegeman, Incorporated had transferred to The H. & H. Electric Company all the common stock of The Hart & Hegeman Manufacturing Company in exchange for all the capital stock of The H. & H. Electric Company which was issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, thus carrying out paragraph (a) of that plan;

That after such exchange of shares, in conformity to such Plan of Reorganization, had been consummated the stockholders of Arrow-Hart & Hegeman, Incorporated, at a meeting held December 10, 1928, voted to dissolve the corporate existence of that corporation, thus carrying out paragraph (b) of that plan;

And that now, in conformity to paragraph (c) of that Plan of Reorganization, the directors of the four companies named in the agreement had agreed upon the consolidation or merger of the four companies, under which one share of the preferred stock of the consolidated corporation will be issued in lieu of each one share of preferred stock of The Arrow Electric Company, and one share of the preferred stock of the consolidated corporation will be issued in lieu of each one share of the preferred stock of The Hart & Hegeman Manufacturing Company, and the common stock of the consolidated or

334 *Exhibit F.*

merged corporation consisting of 200,000 shares, of the par value of $10.00 each, will be issued in the following proportions:

One-half of one share, in lieu of one share of the common stock of The Arrow Manufacturing Company, of the par value of $5.00 each, and one-half of one share in lieu of one share of the common stock of The H. & H. Electric Company, of the par value of $5.00 each.

The matter was then discussed and the following
335 motion was then offered by Mr. Wilcox and seconded by Mr. Burt.

VOTED: That the agreement entitled, "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company", dated December 11, 1928, and executed by a majority of the directors of each of such four corporations under the corporate seals of the respective corporations, be and the same is hereby ratified and approved, and the officers of this company be and they are hereby authorized to take the necessary steps to
336 have such agreement approved by the Secretary of the State of Connecticut and to consummate such consolidation.

The President stated that under the provisions of Section 3522 of the General Statutes of Connecticut, such agreement to be effective must be approved by a stock vote of at least two-thirds of all the outstanding stock of each class of each of the four companies. Accordingly, a stock vote was had and the tellers reported as follows:

Exhibit F.

PREFERRED STOCK.

Total number of shares outstanding	13,333
Number of shares necessary for passage of the vote	8,889
Number of shares voting to approve	11,522
Number of shares voting not to approve	0

COMMON STOCK

Total number of shares outstanding	20,000
Number of shares necessary for passage	13,334
Number of shares voting to approve	20,000
Number of shares voting not to approve	0

The President then declared the resolution to approve the Agreement of Consolidation or Merger had been passed and the agreement approved by a vote of more than two-thirds of all the outstanding stock of each class of this corporation.

It was then, on motion duly made by Mr. Wilcox, and seconded by Mr. Burt, unanimously

VOTED: That the Secretary of this corporation be and he is hereby authorized to execute the certificate attached to the Agreement of Consolidation or Merger, showing the action taken this day by the stockholders and to affix the seal of this corporation thereto.

The meeting then adjourned.

Attest: ROBERT C. BUELL
Secretary

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Exhibit F.

Ballot

Special meeting of Stockholders of The Hart & Hegeman Manufacturing Company, December 31, 1928.

Ballot to approve the "Agreement for the Consolidation or Merger between the Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company".

341

Voted Yes

20,000 Shares COMMON STOCK

THE H & H ELECTRIC COMPANY

SAMUEL P. WILLIAMS
Prest. & Treas.
Authorized Agent

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Exhibit F. 343

Ballot

Special Meeting of Stockholders of The Hart & Hegeman Manufacturing Company, December 31, 1928.

Ballot to approve the "Agreement for the Consolidation or Merger between the Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric company".

Voted Yes 344

11522 shares represented by proxies for the PREFERRED STOCK.

L. P. BROADHURST
WM. R. C. CORSON
JOSEPH R. ENSIGN
P. B. GALE
J. O. ENDERS
ROBERT B. NEWELL
Proxies for Holders of Shares
of The above number.

345

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Exhibit G.

CERTIFICATE OF INCORPORATION

of

THE ARROW MANUFACTURING COMPANY

We, the subscribers, certify that we do hereby associate ourselves as a body politic and corporate under the statute laws of the State of Connecticut; and we further certify:

FIRST: That the name of the corporation is The Arrow Manufacturing Company.

347

SECOND: That said corporation is to be located in the town of Hartford in the State of Connecticut.

THIRD: That the nature of the business to be transacted, and the purposes to be promoted or carried out, by said corporation, are as follows:

(a) To manufacture, buy, sell and deal in goods, wares, merchandise, appliances, devices, tools and implements of every and any nature, kind or description whatever;

(b) To buy or otherwise acquire, use and deal
348 in letters patent and patent rights of the United States and foreign countries relating to such appliances, devices, tools or implements or processes for the manufacture thereof;

(c) To buy or otherwise acquire, use and deal in, so far as by law permitted, trade-marks and trade labels granted by the United States of America and by foreign countries, relating to the businesses conducted by the corporation;

(d) To subscribe for, purchase or otherwise acquire, hold, sell, exchange, assign, transfer, pledge

or otherwise dispose of shares of the capital stock, bonds, debentures, obligations or securities of any kind of any public or private corporation or of any state or territory or of the United States or of any foreign country, and while the owner thereof to exercise and enjoy all or any of the rights, privileges and benefits of ownership including the right to vote thereon and to receive and use for the purposes of this corporation and/or to distribute in dividends the income from such shares, bonds, debentures, obligations or securities of any kind and the income of and/or gains from sales of such property; provided, however, that nothing in these articles shall give this corporation the power to sell or negotiate its own choses in action or to sell, guarantee or negotiate the choses in action of other persons or corporations as investments or as a business, or to do the business of an investment company as the same is defined in Chapter 71 of the General Statutes of 1918, or in any acts amending said Chapter or any section thereof.

FOURTH: That the amount of capital stock of said corporation hereby authorized is One Million Dollars ($1,000,000) divided into two hundred thousand (200,000) shares of the par value of Five Dollars ($5) each, which stock shall be all one class.

FIFTH: That the amount of capital stock with which this corporation shall commence business is Two Thousand Dollars ($2,000).

SIXTH: That the duration of said corporation is unlimited

352 *Exhibit G.*

Signatures of Incorporators

NAME	RESIDENCE
Edward R. Grier	Hartford, Conn.
Benj. C. Perkins	Hartford, Conn.
Harvey C. Pond	West Hartford, Conn.

Dated at Hartford, this 30th day of November, 1928.

353 State of Connecticut }
County of Hartford } ss.:

Hartford, November 30, 1928.

Personally appeared Edward R. Grier, Benjamin C. Perkins and Harvey C. Pond, being all of the incorporators of The Arrow Manufacturing Company, and made solemn oath to the truth of the foregoing certificate by them respectively subscribed, before me

ALICE C. PETERSON
Notary Public (SEAL)

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Exhibit G. 355

By-Laws
of
The Arrow Manufacturing Company

Adopted at the first meeting of the incorporators and subscribers of said corporation held on the 1st day of December, 1928, at No. 15 Lewis Street, Hartford, Connecticut.

Seal

(1) The corporate seal shall have inscribed 356
thereon the name of this corporation, the year of its organization and the words "Corporate Seal, Connecticut."

Stockholders and Stockholders' Meetings

(2) All stockholders' meetings shall be held, unless otherwise appointed in the call, at the principal office of this corporation.

(3) The annual meetings of the stockholders after the year 1928 shall be held on a day in January to be fixed from time to time by the Board of Directors. 357

(4) At the annual meetings of the stockholders they shall elect from their own number by a plurality vote by ballot a board of not less than three nor more than eleven directors who shall hold office for one year and until others are chosen and qualified in their stead.

Directors

(5) The property and affairs of this corporation shall be managed by the Board of Directors

358 *Exhibit G.*

which may exercise all such powers and do all such things as may be exercised or done by this corporation, but subject, nevertheless, to the provisions of the law of the State of Connecticut, of the Certificate of Incorporation and of these By-Laws. The Board of Directors by affirmative vote of a majority thereof may appoint from their number an executive committee and delegate to the same any of the powers of the Board of Directors.

(6) A majority of the Board of Directors shall constitute a quorum for the transaction of any business except that a less number may adjourn from time to time or fill vacancies as hereinafter provided.

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(7) Whenever this corporation holds any stock of any other corporation, one or more directors and/or executive officers and/or agents of this corporation as designated by the Directors of this corporation may be chosen directors of such other corporation whether he be a stockholder or they be stockholders in such corporation or not.

(8) At the first meeting of the Board of Directors after their election, when there shall be a quorum, they shall elect by ballot from their own number a President. They may also at any time or times elect one or more Vice-Presidents and shall at said first meeting elect a Treasurer and a Secretary. They may also appoint at any time an Assistant Treasurer and an Assistant Secretary (who need not be members of the Board) and such other officers and/or agents as they may from time to time determine.

360

(9) A regular meeting of the Board of Directors shall be held without notice immediately after the

361

annual stockholders' meeting in each year at the principal office of the corporation or, by order of the Board, elsewhere, at an hour to be fixed by the Board.

(10) Special meetings of the Board of Directors may be called by the President or Secretary, the same to be held at the time and place specified in such notice.

PRESIDENT

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(11) The President shall be the chief executive officer and head of the corporation and in the recess of the Board of Directors shall have the general control and management of its business and affairs, *subject*, however, to the right of the Board of Directors to delegate any specific powers except such as may be by the laws of the State of Connecticut exclusively conferred on the President, to any other officer or officers of the corporation.

VICE PRESIDENT

363

(12) The Vice-Presidents in order of election in the absence of the President shall perform the duties of the President.

SECRETARY

(13) The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and act as clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose. In the absence of the Secretary from any meeting, the presiding officer of such meeting may appoint any person to

364 *Exhibit G.*

act as secretary thereof. The Secretary shall also perform such other duties as may be prescribed by the Board of Directors or the President.

TREASURER

(14) The Treasurer shall keep, or cause to be kept, full and accurate account of receipts and disbursements in books belonging to the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation.

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RESIGNATION

(15) Any director or officer may resign his office at any time, such resignation to be made in writing.

CORPORATE BOOKS

(16) The transfer books of the corporation may be closed by order of the Board of Directors for a period not exceeding fifteen days preceding any meeting, annual or special, of the stockholders, or

366 the day appointed for the payment of a dividend.

Exhibit G. 367

WAIVER OF NOTICE OF FIRST MEETING
OF INCORPORATORS AND SUBSCRIBERS

of

THE ARROW MANUFACTURING COMPANY

We, the undersigned, being all the subscribers to the capital stock and all of the incorporators of the above named corporation, incorporated under the laws of the State of Connecticut, do hereby waive all notice, whether statutory or otherwise, of the time, place and purpose of the first meeting of said corporation and do specify the 1st day of December, A. D. 1928, at 9:15 o'clock A. M. as the time and No. 15 Lewis Street, Hartford, Connecticut, as the place for said meeting and do consent to the transaction of such business as may come before the meeting, or any adjournment thereof, including the election of directors and the adoption of by-laws, the authorization of the Board of Directors to issue the shares of the unissued authorized capital stock of said corporation and to accept in full or part payment of the subscriptions therefor either cash or such property as said Board may, in its discretion, deem to be necessary to or proper for the business of this corporation, and the authorization of the Board of Directors to call in the subscriptions to the capital stock heretofore or hereafter made to the full amount of such subscriptions, the same to be paid as and when called for by said Board either in cash or by the transfer of such property as may be deemed by said Board, in its discretion, to be necessary to or proper for the business of this corporation. 368 369

EDWARD R. GRIER
BENJ. C. PERKINS
HARVEY C. POND

370 *Exhibit G.*

SUBSCRIPTIONS TO THE CAPITAL STOCK

of

THE ARROW MANUFACTURING COMPANY

WHEREAS: THE ARROW MANUFACTURING COMPANY has been incorporated under the laws of the State of Connecticut;

NOW THEREFORE, We, the undersigned do hereby severally and respectively subscribe to the number of shares of the capital stock of said corporation set
371 opposite our respective signatures.

Name	*Residence*	*No. of Shares*
Edward R. Grier	Hartford, Conn.	398
Benj. C. Perkins	Hartford, Conn.	1
Harvey C. Pond	Hartford, Conn.	1

MINUTES OF FIRST MEETING

of

372 INCORPORATORS AND SUBSCRIBERS

of

THE ARROW MANUFACTURING COMPANY

The first meeting of the corporation was held on the 1st day of December, 1928 at 9:15 o'clock A. M, at No. 15 Lewis Street, Hartford, Connecticut, pursuant to a written waiver of notice signed by all the subscribers to the capital stock and all the incorporators specifying said time and place.

Exhibit G.

The following incorporators and subscribers were present in person:

Name	*No. of Shares*
Edward R. Grier	398
Benjamin C. Perkins	1
Harvey C. Pond	1

being all the incorporators and subscribers of the corporation.

Mr. Edward R. Grier called the meeting to order, and on motion was elected Chairman, and Mr. Benjamin C. Perkins was chosen Temporary Clerk.

The Chairman reported that the Certificate of Incorporation of this corporation was filed in the office of the Secretary of the state of Connecticut on the 30th day of November, 1928, and that said Secretary of State had examined the same and endorsed thereon the word "Approved" with his name and official title, and that prior to such filing the franchise tax required by law had been paid, and that a certified copy of such Certificate of Incorporation had been filed in the office of the Town Clerk in the Town of Hartford, the said Hartford being the town in which this corporation is located.

The Temporary Clerk presented a written waiver of notice of this meeting signed by all the subscribers to the capital stock and all the incorporators of this corporation and the same was ordered to be recorded at length upon the records of this corporation.

The Chairman presented a form of by-laws for the regulation of the affairs of this corporation which were read and unanimously adopted.

376 *Exhibit G.*

The Chairman presented the original subscriptions to the stock of this corporation showing that Messrs. Edward R. Grier, Benjamin C. Perkins and Harvey C. Pond had subscribed for Four Hundred (400) shares of the capital stock of this corporation, the same being the full amount of capital stock with which this corporation is authorized to do business.

Messrs. Edward R. Grier, Benjamin C. Perkins and Harvey C. Pond were nominated for directors of the corporation to hold office until the annual
377 meeting and until others are chosen and qualified in their stead. No other nominations having been made, the meeting thereupon proceeded to vote upon the said nominations and a ballot having been had the Chairman announced that the above named persons had been unanimously elected Directors of this corporation for the term aforesaid.

The Board of Directors were authorized to call in the subscriptions to the capital stock to the full amount of such subscriptions, the same to be paid as and when called for by said Board, either in cash or by the transfer of such property as may be deemed by said Board, in its discretion, to be neces-
378 sary to or proper for the business of this corporation.

Upon motion duly made and seconded, it was resolved that the seal, an impression of which is hereto affixed, be adopted as the (Seal) corporate seal of this corporation.

Upon motion duly made and seconded, it was ordered that copies of each of the following papers, or the originals thereof, be inserted in the minute book for the purpose of reference:

Exhibit G. 379

(1) Certificate of Incorporation.
(2) By-Laws
(3) Waiver of Notice of this Meeting
(4) Subscriptions to Stock

No further business being presented, the meeting thereupon adjourned.

Attest:

BENJ. C. PERKINS
Temporary Clerk

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WAIVER OF NOTICE OF FIRST MEETING
OF THE BOARD OF DIRECTORS OF
THE ARROW MANUFACTURING COMPANY

We, the undersigned, being all the directors of The Arrow Manufacturing Company, hereby waive notice of the time, place and purpose of a meeting of the Board of Directors of said corporation and designate the 1st day of December 1928 at 10:00 o'clock A. M. as the time and No. 15 Lewis Street, Hartford, Connecticut as the place of said meeting.

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Dated this 1st day of December, 1928.

EDWARD R. GRIER
BENJ. C. PERKINS
HARVEY C. POND

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Exhibit G.

MINUTES OF FIRST MEETING

of

BOARD OF DIRECTORS

of

THE ARROW MANUFACTURING COMPANY

The first meeting of the Board of Directors of THE ARROW MANUFACTURING COMPANY was held at No. 15 Lewis Street, Hartford, Connecticut, on the
383 1st day of December, 1928, at ten o'clock A. M., pursuant to a written waiver of notice, signed by all the directors, fixing said time and place.

All members of the Board were present.

The following were unanimously elected to the offices set before their respective names, to hold office until the next annual meeting of the corporation and until their successors are respectively elected and qualified:

President and Treasurer	Edward R. Grier
Secretary	Harvey C. Pond

The President thereupon took the chair and the
384 Secretary acted as secretary of this meeting.

The minutes of the first meeting of the incorporators and subscribers to the capital stock of the corporation were thereupon read.

On motion made and duly seconded it was unanimously

VOTED: That an office of this corporation be established and maintained at the banking office of Phoenix State Bank & Trust Company, No. 803 Main Street, Hartford, and that Arthur C. Mason be and he hereby is designated

as the agent of this corporation in charge of said office upon whom process against it may be served; that meetings of the Board of Directors be held either at said banking office or elsewhere in Connecticut as the Board shall from time to time order, and that said trust company be and it hereby is appointed transfer agent of the stock of this company.

It was thereupon unanimously:

VOTED: Full payment of all subscriptions to the capital stock of this company is hereby 386
called, payable in cash.

There was thereupon paid into the treasury of the company Two Thousand Dollars ($2,000) in cash, being the full amount of capital with which this company has stated in its Certificate of Incorporation as being the amount with which it would begin business, and being in full of all subscriptions to its stock, viz:

Mr. Grier's subscription for	398	shares
Mr. Perkins' & Mr. Pond's subscriptions for	1	share each
Total	400	shares

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It was thereupon:

VOTED: To issue to the respective subscribers certificates of shares or receipts pending preparation of permanent certificates.

The form of stock certificate of this corporation was presented and the same approved.

388 *Exhibit G.*

The Certificate of Organization of this corporation was thereupon prepared and filed as required by law.

It was ordered that copies of the following papers, or originals thereof, be inserted in the minute book for reference:

1. Waiver of Notice.
2. Certificate of Organization.

On motion duly made and seconded the meeting
389 recessed to reconvene on adjournment of meeting of stockholders of the corporation to be held forthwith.

Attest:

HARVEY C. POND
Secretary

CERTIFICATE OF ORGANIZATION

of

THE ARROW MANUFACTURING COMPANY

390

The undersigned, a majority of the directors of The Arrow Manufacturing Company, located in the Town of Hartford, hereby certify as follows:

First: That the amount of the authorized capital stock subscribed for is four hundred (400) shares, the same being all common stock of Five (5) Dollars each, and upon all of which there has been paid not less than the full amount of Two Thou-

Exhibit G.

391

sand (2,000) Dollars, with which the incorporators in the Certificate of Incorporation stated the company would begin business.

Second: That the amount paid thereon in cash is Two Thousand Dollars ($2,000).

Third: That the amount paid thereon in property other than cash is nothing.

Fourth: That Five Dollars ($5) has been paid upon each share subscribed for.

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Fifth: That the name, residence and post-office address of each of the original subscribers to said stock, with the number and class of shares subscribed for by each are as follows:

Name	*Residence*	*P. O. Address*	*No. of Shares*
Edward R. Grier	Hartford, Conn.	Hartford, Conn.	398
Benjamin C. Perkins	" "	" "	1
Harvey C. Pond	West Hartford, Conn.	W. Hartford, Conn.	1

Sixth: That the directors and officers of said corporation have been duly elected and that its by-laws have been adopted.

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Sevelith: That the name, residence and post-office address of each of the officers and directors of said corporation are as follows:

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Exhibit G.

Name	*Residence*	*P. O. Address*
President:		
Edward R. Grier	Hartford, Conn.	Hartford, Conn.
Treasurer:		
Edward R. Grier	Hartford, Conn.	Hartford, Conn.
Secretary:		
Harvey C. Pond	W. Hartford, Conn.	W. Hartford, Conn.
Directors:		
Edward R. Grier	Hartford, Conn.	Hartford, Conn.
Benjamin C. Perkins	" "	" "
Harvey C. Pond	W. Hartford, Conn.	W. Hartford, Conn.

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Eighth: That the location of its principal office in this state is the banking office of Phoenix State Bank & Trust Company, No. 803 Main Street, Hartford, Connecticut, and the name of the agent or person in charge thereof upon whom process against it may be served is Arthur C. Mason.

Dated at Hartford, this 1st day of December, 1928.

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EDWARD R. GRIER
HARVEY C. POND
A Majority of the Directors

Exhibit G. 397

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss.:

Hartford, December 1, 1928.

Personally appeared Edward R. Grier, and Harvey C. Pond, signers of the foregoing Certificate of Organization, a majority of the directors of The Arrow Manufacturing Company, and made oath to the truth of the same, before me

ALICE C. PETERSON
Notary Public
(Seal) 398

MINUTES OF MEETING OF STOCKHOLDERS

of

THE ARROW MANUFACTURING COMPANY

A meeting of the stockholders of THE ARROW MANUFACTURING COMPANY was held on the 1st day of December, 1928, at 10:15 A. M. at No. 15 Lewis Street, Hartford, Connecticut.

All stockholders were present, viz.: Messrs. Grier, Perkins and Pond. 399

The following vote was unanimously passed:

> VOTED: That the Board of Directors of this corporation is hereby authorized to issue all or any part of its unissued authorized capital stock; to receive and approve all additional subscriptions for the same and to accept in full or part payment of such subscriptions either cash or such property as the Board in its discretion may deem necessary or proper for the business of the corporation.

400 *Exhibit G.*

All stockholders waived their several and respective rights as stockholders to subscribe to such additional stock as the Board of Directors may decide to issue under the authority of the foregoing vote.

The President presented to the meeting the plan of reorganization as set forth in the minutes of the Board of Directors of Arrow-Hart & Hegeman, Inc., a copy of which is annexed to these minutes. The plan as therein outlined was, on motion duly made and seconded, unanimously approved and the Directors were authorized to issue any or all of the unis-
401 sued authorized capital stock of this corporation, viz., 199,600 shares to Arrow-Hart & Hegeman, Inc. or to the stockholders thereof pro rata in exchange for the property of said Arrow-Hart & Hegeman, Inc. to be transferred to this corporation under such plan of reorganization.

The President suggested that in order to fully carry out such plan of reorganization it was advisable that the stockholders of this company turn in the stock owned by them, viz., 400 shares, to this corporation in order to enable it to make the exchange as outlined in such plan of reorganization for the property of Arrow-Hart & Hegeman, Inc.,
402 to be transferred to this company under such plan of reorganization, viz., 30,000 of the common shares of The Arrow Electric Company, par $25 each.

The suggestion of the President was unanimously approved and each stockholder for himself agreed to transfer to this corporation on demand shares issued to him or to which he was entitled by reason of the payment of his subscription.

No further business appearing the meeting thereupon adjourned.

ATTEST:

HARVEY C. POND
Secretary

Exhibit G.

403

11/30/28

A special meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated was duly held, pursuant to notice in the Directors' Room of the Phoenix State Bank and Trust Company, 803 Main Street, Hartford, Connecticut, on Friday, November 30, 1928, at 4 o'clock in the afternoon.

The following directors were present, namely Messrs. Grier, Burt, Chase, Day, Glazier, Guett, Perkins, Stevens and Williams.

There were also present the Companies' Counsel, 404
Messrs. Arthur L. Shipman and Charles Welles Gross.

The President reported that since the last meeting of this Board on November 10, 1928, the officers and counsel have been at work upon the formulation of the plan of reorganization and have considered the matter both from the viewpoint of satisfying the criticism of the Federal Trade Commission and of meeting the income tax situation. Mr. Arthur Randall, C. P. A., of this City has been of great assistance to your officers and counsel in suggesting and in working out the details of the plan hereinafter set forth. They have also conferred with Colonel Robert H. Montgomery of New 405
York, the well known authority on Income Tax Law and Procedure, and have received from Colonel Montgomery an opinion, dated November 27, 1928, that the plan outlined in that opinion will involve no taxable gain either to the corporation or its stockholders at this time.

The outline of the plan is as follows:

(a) By vote of its stockholders Arrow-Hart & Hegeman, Incorporated will transfer to a new

406 *Exhibit G.*

Arrow Company, to be known as The Arrow Manufacturing Company, all the shares of the common stock of the Arrow Electric Company in exchange for all the shares of The Arrow Manufacturing Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share, par value $5.00, for every share of Arrow-Hart & Hegeman, Inc. now held by the stockholders. Likewise Arrow-Hart & Hegeman, Incorporated will transfer to a new Hart & Hegeman Company, to be known as
407 The H. & H. Electric Company, all the shares of the common stock of The Hart & Hegeman Manufacturing Company in exchange for all the shares of The H. & H. Electric Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share of The H. & H. Electric Company, par value $5.00, for each share of Arrow-Hart & Hegeman, Incorporated now held by the stockholders. This will be done without a surrender of the shares of Arrow-Hart & Hegeman, Incorporated.

To accomplish this first step a special stockholders' meeting of Arrow-Hart & Hegeman, Incor-
408 porated will be called and held on December 6, 1928.

(b) When such exchange of shares in conformity to this plan of reorganization has been consummated prior to December 10, 1928, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at the meeting called for December 10, 1928, or at an adjournment thereof, that corporation may be dissolved. It will then have no assets and no liabilities, and its dissolution will be a purely formal matter.

Exhibit G.

(c) There will then be in existence four corporations,—The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow Manufacturing Company and the new H. & H. Electric Company. The corporate stock of these four companies will then be held as follows:

Name of Company	*Stock*				*Stockholders*
Arrow Electric Company	30,000	shs.	Com.	par $25	Arrow Mfg. Co.
	18,950	"	Pfd.	" 100	Public
Hart & Hegeman Mfg. Co.	20,000	"	Com.	" 25	H.&H. Elec. Co.
	13,333	"	Pfd.	" 100	Public
Arrow Mfg. Co.	200,000	"	Com.	" 5	Public
H. & H. Electric Co.	200,000	"	Com.	" 5	Public

The plan provides that these four companies, all having manufacturing charters, will make an agreement for consolidation or merger by vote, in the first instance, of the Board of Directors of each of the four companies, to be dated about December 10, 1928 and to be submitted to stockholders at a meeting to be called for each corporation on December 31, 1928, at which time the agreement, if approved by the stockholders, will be effective, a particularly advantageous time as the close of the tax year. By this agreement of merger or consolidation it will result that the merged or consolidated corporation will have outstanding one class of preferred stock equal in the aggregate to the number of shares of preferred stock of Arrow Electric Company and Hart & Hegeman Manufacturing Company now outstanding, so that the public owning the preferred stock will receive one share of preferred stock, of the par value of $100., for each share of preferred stock of The Arrow Electric Company now outstanding, and one share of preferred stock for each share of preferred stock of

412 *Exhibit G.*

The Hart & Hegeman Manufacturing Company now outstanding; that the common stock of the merged or consolidated corporation will be 200,000 shares, of the par value of $10., so that one share of the common stock of the merged or consolidated corporation will be issued in exchange for a unit of one share of The Arrow Manufacturing Company common, of the par value of $5, and one share of the H. & H. Electric Company common, par value $5, the net result on common stock being that the stockholders of Arrow-Hart & Hegeman, Incorporated
413 will ultimately hold one share of the merged or consolidated corporation, of the par value of $10., for every one share of Arrow-Hart & Hegeman, Incorporated, now held by them.

The President further reported that, to accomplish this entire plan of reorganization before the close of the calendar year, it is necessary that notices for such a meeting be issued forthwith, to be held December 6th, and in order that these notices may be printed and be issued tomorrow, December 1st, counsel have approved a form of letter to the stockholders of Arrow-Hart & Hegeman, Incorporated, a form of proxy running to the same six
414 gentlemen who have been named in the proxy for the meeting of December 10th, and a form of call for the meeting, all of which he then submitted for consideration and approval by this meeting.

The matter was then discussed and it was then, on motion made by Mr. Burt and seconded by Mr. Chase,

VOTED: That the plan of reorganization as outlined by the President be approved by this Board and that a special meeting of stockhold-

Exhibit G.

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ers be called for December 6, 1928, to consider and adopt such plan and to authorize the exchange of shares therein provided for.

On motion made by Mr. Chase and seconded by Mr. Stevenson, it was further

VOTED: That the form of the call for such meeting, the form of Power of Attorney Consent and proxy submitted and the form of letter to be sent to stockholders, signed by Mr. Grier, as President and Mr. Williams, as Vice President, be and they are hereby approved.

416

In order to prepare papers for the carrying out of such plan, if adopted, and in order to expedite the voting at both meetings on December 6th and December 10th by proxy, it was on motion made by Mr. Day and seconded by Mr. Burt:

VOTED: That in accordance with the by-laws of this company, the stock transfer books of this company be closed from this 30th day of November, 1928, until the final adjournment of the stockholders meeting called for December 10, 1928.

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The meeting adjourned at 5:30 o'clock P. M.

Attest:

BENJAMIN C. PERKINS
Secretary

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Exhibit G.

MINUTES OF MEETING

of

BOARD OF DIRECTORS

of

THE ARROW MANUFACTURING COMPANY

The Board of Directors of THE ARROW MANUFACTURING COMPANY reconvened their meeting at No. 15 Lewis Street on December 1, 1928 at 10:30
419 A. M., all of the Directors being present, viz.: Messrs. Grier, Perkins and Pond.

The minutes of the meeting of the stockholders of the company held this day immediately preceding the reconvention of this meeting were read.

In accordance with and for the purpose of carrying out the plan of reorganization outlined in the minutes of said stockholders' meeting, on motion duly made and seconded the following vote was unanimously passed:

VOTED: The officers of this company are hereby authorized to issue to Arrow-Hart & Hegeman, Inc. or to its several and respective
420 stockholders in proportion to their holdings of stock thereof, share for share, certificates of stock of this corporation to the full amount of its unissued and authorized capital stock, viz., 199,600 shares, and to deliver the same together with the 400 shares of this corporation now issued, to such corporation or to the stockholders thereof, in exchange for and on transfer to this corporation by Arrow-Hart & Hegeman, Inc. of all common shares of capital stock of

Exhibit G.

421

The Arrow Electric Company, viz., 30,000 shares, par $25, now held by said Arrow-Hart & Hegeman, Inc.

And we, a majority of the Directors of The Arrow Manufacturing Company, hereby state over our hands that in our opinion said 30,000 shares of authorized Common capital stock of The Arrow Electric Company has a value in excess of $1,000,000, being the par value of the capital stock of this company to be issued and delivered in exchange therefor.

422

BENJ. C. PERKINS
EDWARD R. GRIER
HARVEY C. POND

No further business appearing, the meeting thereupon adjourned.

Attest:

HARVEY C. POND
Secretary

423

424 *Exhibit G.*

WAIVER OF NOTICE OF SPECIAL MEETING
OF STOCKHOLDERS OF
THE ARROW MANUFACTURING COMPANY

The undersigned, being all the stockholders of The Arrow Manufacturing Company, do hereby waive all notice of a special meeting of the stockholders of that company to be held on the 6th day of December, 1928 at 11:15 o'clock in the forenoon, at the office of the corporation, No. 803 Main Street, Hartford, Connecticut, and do consent to the transaction of any business which may come before such meeting, including a proposal to amend the sixteenth paragraph of the by-laws of this company.

425

Dated at Hartford, this 6th day of December, 1928.

EDWARD R. GRIER
BENJAMIN C. PERKINS
HARVEY C. POND

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS

426 OF

THE ARROW MANUFACTURING COMPANY

A special meeting of the stockholders of The Arrow Manufacturing Company was duly held, pursuant to waiver signed by each and every stockholder, at the office of the company, No. 803 Main Street, Hartford, Connecticut, on December 6, 1928, at 11:15 o'clock in the forenoon.

All the stockholders were present, viz: Messrs. Grier, Perkins and Pond.

Exhibit G.

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The President reported that pursuant to the plan of reorganization involving the merger of four companies it was deemed essential that the stock books of this company should be closed from this date until the adjournment of a meeting of its stockholders which it is expected will be called to be held on December 31, 1928, and that to close such books for such period it would be necessary to amend the by-laws as now existing.

On motion duly made and seconded, it was then unanimously voted that paragraph No. 16 of the by-laws of this company as now existing be and the same is hereby amended to read as follows: The transfer books of this corporation may be closed by order of the board of directors for such period preceding any stockholders' meeting or preceding the day appointed for the payment of a dividend as said board of directors may deem necessary or proper in any case.

428

No further business appearing, the meeting thereupon adjourned.

Attest:

HARVEY C. POND,
Secretary

429

430 *Exhibit G.*

WAIVER OF NOTICE OF SPECIAL MEETING
OF DIRECTORS OF
THE ARROW MANUFACTURING COMPANY

The undersigned, constituting all the directors of The Arrow Manufacturing Company, hereby waive notice of a special meeting of its board of directors to be held at the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, being the corporate office of this company, on Thursday, December 6, 1928, at 11:45 o'clock in the fore-
431 noon.

Dated at Hartford this 6th day of December, 1928.

EDWARD R. GRIER
BENJ. C. PERKINS
HARVEY C. POND

MINUTES OF SPECIAL MEETING OF BOARD
OF DIRECTORS OF
THE ARROW MANUFACTURING COMPANY

432 A special meeting of the board of directors of The Arrow Manufacturing Company was duly held, pursuant to waiver signed by all the directors, at the corporate office of the company in the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, on Thursday, December 6, 1928, at 11:45 o'clock in the forenoon.

All the directors were present, viz, Messrs. Grier, Perkins and Pond.

Mr. Edward R. Grier, the President, presided.

Exhibit G.

433

The President then stated that, in accordance with the plan of reorganization previously adopted by this company and in accordance with the offer made by this corporation to exchange its shares, the stockholders of Arrow-Hart & Hegeman, Incorporated have this day at a special meeting passed a vote approving and adopting the plan of reorganization above referred to and have transferred to this company Thirty Thousand (30,000) shares, par Twenty-five (25) Dollars each, of the common stock of The Arrow Electric Company, being all the common stock of that company outstanding, in exchange for all the capital stock of this company, 434
consisting of Two Hundred Thousand (200,000) shares, of the par value of Five (5) Dollars each.

By said vote this company was directed to issue and deliver said Two Hundred Thousand (200,000) shares to and in the names of the several and respective stockholders of Arrow-Hart & Hegeman, Incorporated pro rata and in the proportion of one (1) share of the stock of this company for each one (1) share of stock of Arrow-Hart & Hegeman, Incorporated now held by its stockholders, as shown by the stock books of that company, of which an attested list has been furnished to this company by 435
the secretary of Arrow-Hart & Hegeman, Incorporated.

The President then presented to the meeting an attested copy of the vote of the stockholders of Arrow-Hart & Hegeman, Incorporated and the attested list of its stockholders above referred to.

The following vote was then unanimously passed:

VOTED: That whereas Arrow-Hart & Hegeman, Incorporated has transferred to this company all the shares of the common stock of The

436 *Exhibit G.*

Arrow Electric Company, consisting of Thirty Thousand (30,000) shares, of the par value of Twenty-five (25) Dollars each, in exchange for all the shares of this company, pursuant to the plan of reorganization heretofore adopted; and whereas said Arrow-Hart & Hegeman, Incorporated has directed this company to issue said Two Hundred Thousand (200,000) shares of the capital stock of this company to and in the names of the several and respective stockholders of Arrow-Hart & Hegeman, Incorporated
437 pro rata and in the proportion of one (1) share of the stock of this company for each one (1) share of Arrow-Hart & Hegeman, Incorporated now held by such stockholders, as shown by an attested list of its stockholders taken from the stock books of Arrow-Hart & Hegeman, Incorporated; now therefore the vote passed by this board at its meeting held on December 1, 1928 be and the same is hereby amended to read that the officers of this company are hereby authorized and directed to issue to the stockholders of Arrow-Hart & Hegeman, Incorporated, as shown on an attested list of its stockholders,
438 which has been furnished to this company, all the stock of this company now unissued, viz: One Hundred Ninety-nine Thousand Six Hundred (199,600) shares and to deliver the same together with the Four Hundred (400) shares heretofore issued to such stockholders named on such list, the same being so issued by direction of Arrow-Hart & Hegeman, Incorporated in exchange for all the common stock of The Arrow Electric Company which has been transferred to this corporation pursuant to such plan of reorganization.

Exhibit G.

439

In order to expedite the consummation of the plan of reorganization and the merger of the companies as contemplated therein, it was unanimously voted that in accordance with the by-laws of this company as amended this day at a special meeting of its stockholders stock transfer books of this company be and they are hereby closed until the close of business on December 31, 1928 and thereafter until the final adjournment of a special meeting of stockholders to be called to adopt an agreement of consolidation and merger of this company with other companies, this board being of the opinion that the closing of such books is necessary to expedite the consummation of such plan.

440

The President then called attention to the fact that as this company owned all the common stock of The Arrow Electric Company, it would be necessary, in accordance with Article 7 of the by-laws of this company, to designate agents for this company to act as directors of The Arrow Electric Company. It was then unanimously voted that the following be and they hereby are designated agents of this company, eligible to be chosen as directors of The Arrow Electric Company, viz: Edward R. Grier, Benjamin C. Perkins, Charles A. Ten Eyck, Harvey C. Pond, Arthur L. Shipman, Daniel J. Glazier and Charles G. Perkins.

441

Mr. Arthur C. Mason, Vice-President of Phoenix State Bank and Trust Company, Transfer Agent, then appeared before the meeting of this board and reported that in accordance with the vote this day passed the Two Hundred Thousand (200,000) shares of the capital stock of this company had been issued pro rata and in the proportion of one (1) share of this company for each one (1) share of Arrow-Hart & Hegeman, Incorporated), to the

442 *Exhibit G.*

stockholders appearing upon the attested list of stockholders of Arrow-Hart & Hegeman, Incorporated.

No further business appearing, the meeting thereupon adjourned.

Attest:

HARVEY C. POND
Secretary

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443 At a special meeting of the stockholders of Arrow-Hart & Hegeman, Incorporated duly held December 6, 1928 the following vote was passed by a vote of more than two-thirds of all the outstanding stock:

VOTED: That the Plan of Reorganization submitted to and approved by the Board of Directors of this Company at their meeting on November 30, 1928, as set forth in the minutes of that meeting, be and hereby is approved and adopted;

That pursuant thereto this corporation transfer and convey to The Arrow Manufacturing Company all the holdings of this corporation in the common
444 stock of The Arrow Electric Company, consisting of 30,000 shares (par $25 each) in exchange for all the capital stock of The Arrow Manufacturing Company, consisting of 200,000 shares (par $5 each), and that said The Arrow Manufacturing Company be and it is hereby directed to issue and deliver said 200,000 shares to and in the names of the several and respective stockholders of this corporation pro rata and in the proportion of one share of the Arrow Manufacturing Company for each one share of Arrow-Hart & Hegeman, Incorporated now held by them as shown by the stock

Exhibit G.

445

books of this company, of which an attested list shall be furnished to The Arrow Manufacturing Company by the Secretary of this company;

That pursuant thereto this corporation transfer and convey to The H. & H. Electric Company, all the holdings of this corporation in the common stock of The Hart & Hegeman Manufacturing Company, consisting of 20,000 shares (par $25 each) in exchange for all the capital stock of The H. & H. Electric Company, consisting of 200,000 shares (par $5 each), and that said The H. & H. Electric Company be and it is hereby directed to issue and deliver said 200,000 shares to and in the names of 446
the several and respective stockholders of this corporation pro rata and in the proportion of one share of The H. & H. Electric Company for each one share of Arrow-Hart & Hegeman, Incorporated now held by them as shown by the stock books of this company, of which an attested list shall be furnished to The H. & H. Electric Company by the Secretary of this company, and

That the President of this company, or the Treasurer, be and he is hereby authorized and directed to execute and deliver all instruments necessary or convenient to carry out such exchange of shares

Attest: 447

(Seal)

BENJ. C. PERKINS
Secretary

448 *Exhibit G.*

December 8, 1928

A special meeting of the Board of Directors of The Arrow Manufacturing Company will be held at the office of the Pheonix State Bank and Trust Company, #803 Main Street, on Tuesday, December 11, 1928, at 2 o'clock in the afternoon, to consider and approve the agreement for consolidation or merger of:

The Arrow Electric Company
The Hart & Hegeman Manufacturing Company
449 The Arrow Manufacturing Company
The H & H Electric Company

pursuant to the plan of reorganization of which you have knowledge, and to transact any other business incidental to the same matter.

Your presence is earnestly desired as the agreement, if approved, must be signed by at least a majority of the Board.

EDWARD R. GRIER
President

450

Exhibit G.

451

MINUTES OF SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF
THE ARROW MANUFACTURING COMPANY

At a special meeting of the Board of Directors of The Arrow Manufacturing Company held at the office of Phoenix State Bank & Trust Company, No. 803 Main Street, Hartford, on Tuesday, December 11, 1928 at 2:00 o'clock P. M., pursuant to the foregoing call, the following directors were present: Messrs. Grier, Perkins and Pond.

The President stated that the meeting was called to consider and act upon a proposed agreement for 452
the consolidation and merger of this company, The H & H Electric Company, The Hart & Hegeman Manufacturing Company and The Arrow Electric Company, pursuant to a plan or reorganization, an outline of which was approved at a stockholders' meeting of this company, held December 1, 1928, and which appears in the minutes of said meeting.

The President presented written form of agreement of consolidation or merger of said companies, copy of which is annexed to these minutes. The same was fully considered and discussed. On motion duly seconded the form of said agreement was approved and signed by the individual directors of 453
the company under its corporate seal.

Thereupon on motion duly seconded it was unanimously voted to submit said agreement to the stockholders of this company and that a meeting thereof be called for the purpose of considering the same, to be held at the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, on Monday, December 31, 1928, at 12:00 o'clock Noon, and that notice of the time, place and object of such meeting be mailed forthwith to the last

454 *Exhibit G.*

known post office address of each of the stockholders of this corporation, and that such notice be published once in each week for three successive weeks in the Hartford Times.

Form of call for said meeting was presented and the same was approved.

The President reported that a meeting of the stockholders of The Arrow Electric Company would be held on December 31, 1928 for the purpose of considering said agreement of consolidation and merger. It was thereupon unanimously voted
455 that the executive officers of this company or any one of them be and they hereby are authorized to vote the stock of The Arrow Electric Company held in the treasury of this company in favor of resolution approving such merger and consolidation.

No further business appearing, the meeting thereupon adjourned.

HARVEY C. POND
Secretary

MINUTES OF SPECIAL MEETING OF THE
456 STOCKHOLDERS
OF
THE ARROW MANUFACTURING COMPANY

A Special Meeting of the Stockholders of The Arrow Manufacturing Company was duly held, pursuant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, on Monday, December 31, 1928, at 12 o'clock noon.

The call for the meeting was read and ordered recorded with the minutes of the meeting.

Exhibit G.

457

The Secretary made return that a copy of this call was mailed on December 11, 1928, twenty days in advance of the meeting, to each stockholder of record, addressed to him at his last known address registered on the books of the company, and that a copy of such call was published once in each week for three successive weeks preceding such meeting in the Hartford Daily Times, a newspaper of this city, having a circulation in the Town of Hartford, in which said corporation is located. He also produced a publisher's affidavit from the Hartford Times, showing the publication.

458

The Secretary also presented an alphabetical list of the stockholders of the corporation, as required by law.

Messrs. Perkins and Burt were then duly appointed a committee on proxies and tellers, and as such committee they reported that 177,871 shares of the stock of this company issued and outstanding were represented in person or by proxy at this meeting.

459

The minutes of a special meeting of the Directors of this company, duly held on December 11, 1928, were then read, showing the action of the Board of Directors in executing an agreement, entitled "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company", dated December 11, 1928. An original of this agreement signed by a majority of the directors of each of the four companies, parties to the agreement, with certificates attached showing that such merger or consolidation had been duly approved at stockholders' meetings of The Arrow Electric Company and The Hart & Hegeman Manu-

460 *Exhibit G.*

facturing Company, was then presented to the meeting.

The President stated that this agreement for the consolidation or merger of the four corporations named was the final step in the consummation of the Plan of Reorganization which was approved by the stockholders of this company at their meeting held December 1, 1928, and set out at length in a copy of the minutes of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 30, 1928, appended to the minutes
461 of that meeting of December 1, 1928. It was then further stated that, in pursuance of that plan and in accordance with the vote of the stockholders of Arrow-Hart & Hegeman, Incorporated, that company transferred to The Arrow Manufacturing Company all the common stock of The Arrow Electric Company in exchange for all the capital stock of The Arrow Manufacturing Company which was issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, as outlined in that plan; and that likewise Arrow-Hart & Hegeman, Incorporated had transferred to The H. & H. Electric Company all the common stock of The Hart & Hegeman Manufacturing Company in exchange for all
462 the capital stock of The H. & H. Electric Company which was issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, thus carrying out paragraph (a) of that plan;

That after such exchange of shares, in conformity to such Plan of Reorganization, had been consummated the stockholders of Arrow-Hart & Hegeman, Incorporated, at a meeting held December 19, 1928, voted to dissolve the corporate existence of that corporation;

And that now, in conformity to paragraph (c) of that Plan of Reorganization, the directors of the

four companies named in the agreement had agreed upon the consolidation or merger of the four companies, from which it will result that one share of the preferred stock of the consolidated corporation will be issued in lieu of each one share of preferred stock of The Arrow Electric Company, and one share of the preferred stock of the consolidated corporation will be issued in lieu of each one share of the preferred stock of The Hart & Hegeman Manufacturing Company, and that the common stock of the consolidated or merged corporation consisting of 200,000 shares, of the par value of $10.00 each, will be issued in the following proportions:

One-half of one share, in lieu of one share of the common stock of The Arrow Manufacturing Company, of the par value of $5.00 each, and one-half of one share in lieu of one share of the common stock of The H. & H. Electric Company, of the par value of $5.00 each.

The Matter was then discussed and the following motion was then offered:

VOTED: That the agreement entitled, "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company", dated December 11, 1928, and executed by a majority of the directors of each of such four corporations under the corporate seals of the respective corporations, be and the same is hereby ratified and approved, and the officers of this company be and they are hereby authorized to take the necessary steps to have such agreement approved by the Secretary of the State of Connecticut and to consummate such consolidation.

466 *Exhibit G.*

The President stated that under the provisions of Section 3522 of the General Statutes of Connecticut, such agreement to be effective must be approved by a stock vote of at least two-thirds of all the outstanding stock of each class of each of the four companies. Accordingly, a stock vote was had and the tellers reported as follows

Total number of shares outstanding	200,000
Number of shares necessary for passage of the vote	133,334
Number of shares voting to approve	177,871
467 Number of shares voting not to approve	0

The President then declared the resolution to approve the Agreement of Consolidation or Merger had been passed and the agreement approved by a vote of more than two-thirds of all the outstanding stock of this corporation.

It was then on motion duly made and seconded, unanimously

VOTED: That the Secretary of this corporation be and he is hereby authorized to execute the certifi-
468 cate attached to the Agreement of Consolidation or Merger, showing the action taken this day by the stockholders and to affix the seal of this corporation thereto.

The meeting then adjourned.

Attest:

HARVEY C. POND
Secretary

Exhibit G.

469

Ballot

Special Meeting of Stockholders of the Arrow Manufacturing Company, December 31, 1928.

Ballot to approve the "Agreement for the Consolidation or Merger between the Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company".

Voted Yes

117871 shares represented by proxies

470

L. P. BROADHURST
WM. R. C. CORSON,
JOSEPH R. ENSIGN
P. B. GALE
J. O. ENDERS
ROBERT B. NEWELL

Proxies for Holders of Shares of the above number.

471

472 **Exhibit H.**

CERTIFICATE OF INCORPORATION

of

THE H & H ELECTRIC COMPANY

We, the subscribers, certify that we do hereby associate ourselves as a body politic and corporate under the statute laws of the State of Connecticut; and we further certify:

FIRST: That the name of the corporation is The H & H Electric company.

473

SECOND: That said corporation is to be located in the town of Hartford in the State of Connecticut.

THIRD: That the nature of the business to be transacted, and the purposes to be promoted or carried out, by said corporation, are as follows:

(a) To manufacture, buy, sell and deal in goods, wares, merchandise, appliances, devices, tools and implements of every and any nature, kind or description whatever;

(b) To buy or otherwise acquire, use and deal
474 in letters patent and patent rights of the United States and foreign countries relating to such appliances, devices, tools or implements or processes for the manufacture thereof;

(c) To buy or otherwise acquire, use and deal in, so far as by law permitted, trade-marks and trade labels granted by the United States of America and by foreign countries, relating to the business conducted by the corporation;

Exhibit H.

475

(d) To subscribe for, purchase or otherwise acquire, hold, sell, exchange, assign, transfer, pledge or otherwise dispose of shares of the capital stock, bonds, debentures, obligations or securities of any kind of any public or private corporation or of any state or territory or of the United States or of any foreign country, and while the owner thereof to exercise and enjoy all or any of the rights, privileges and benefits of ownership including the right to vote thereon and to receive and use for the purposes of this corporation and/or to distribute in dividends the income from such shares, 476
bonds, debentures, obligations or securities of any kind and the income of and/or gains from sales of such property; provided, however, that nothing in these articles shall give this corporation the power to sell or negotiate its own choses in action or to sell, guarantee or negotiate the choses in action of other persons or corporations as investments or as a business, or to do the business of an investment company as the same is defined in Chapter 71 of the General Statutes of 1918, or in any acts amending said Chapter or any section thereof.

FOURTH: That the amount of the capital stock of said corporation hereby authorized is One Million Dollars ($1,000,000) divided into two hundred thousand (200,000) shares of the par value of Five Dollars ($5) each, which stock shall be all one class. 477

FIFTH: That the amount of capital stock with which this corporation shall commence business is Two Thousand (2,000) Dollars.

478 *Exhibit H.*

SIXTH: That the duration of said corporation is unlimited.

Signatures of Incorporators

Name	*Residence*
Samuel P. Williams	Hartford, Conn.
Monroe Guett	Hartford, Conn.
John R. Cook	Hartford, Conn.

Dated at Hartford, this 30th day of November, 1928.

479

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Hartford, November 30, 1928.

Personally appeared Samuel P. Williams, Monroe Guett and John R. Cook, being all of the incorporators of The H & H Electric Company, and made solemn oath to the truth of the foregoing certificate by them respectively subscribed, before me.

480

ALICE C. PETERSON
(Seal) Notary Public.

Exhibit H.

481

BY-LAWS

of

THE H & H ELECTRIC COMPANY

Adopted at the first meeting of the incorporators and subscribers of said corporation held on the 1st day of December, 1928, at No. 15 Lewis Street, Hartford, Connecticut.

SEAL

(1) The corporate seal shall have inscribed thereon the name of this corporation, the year of its organization and the words "Corporate Seal, Connecticut." 482

STOCKHOLDERS AND STOCKHOLDERS' MEETINGS

(2) All stockholders' meetings shall be held, unless otherwise appointed in the call, at the principal office of this corporation.

(3) The annual meetings of the stockholders after the year 1928 shall be held on a day in January to be fixed from time to time by the Board of Directors. 483

(4) At the annual meetings of the stockholders they shall elect from their own number by a plurality vote by ballot a board of not less than three nor more than eleven directors who shall hold office for one year and until others are chosen and qualified in their stead.

DIRECTORS

(5) The property and affairs of this corporation shall be managed by the Board of Directors

484 *Exhibit H.*

which may exercise all such powers and do all such things as may be exercised or done by this corporation but subject, nevertheless, to the provisions of the law of the State of Connecticut, of the Certificate of Incorporation and of these By-Laws. The Board of Directors by affirmative vote of a majority thereof may appoint from their number an executive committee and delegate to the same any of the powers of the Board of Directors.

(6). A majority of the Board of Directors shall constitute a quorum for the transaction of any business except that a less number may adjourn from time to time or fill vacancies as hereinafter provided.

485

(7) Whenever this corporation holds any stock of any other corporation, one or more directors and/or executive officers and/or agents of this corporation as designated by the Directors of this corporation may be chosen directors of such other corporation whether he be a stockholder or they be stockholders in such corpofation or not.

(8) At the first meeting of the Board of Directors after their election, when there shall be a quorum, they shall elect by ballot from their own number a President. They may also at any time or times elect one or more Vice-Presidents and shall at said first meeting elect a Treasurer and a Secretary. They may also appoint at any time an Assistant Treasurer and an Assistant Secretary (who need not be members of the Board) and such other officers and/or agents as they may from time to time determine.

486

(9) A regular meeting of the Board of Directors shall be held without notice immediately after

the annual stockholders' meeting in each year at the principal office of the corporation or, by order of the Board, elsewhere, at an hour to be fixed by the Board.

(10) Special meetings of the Board of Directors may be called by the President or Secretary, the same to be held at the time and place specified in such notice.

PRESIDENT

(11) The President shall be the chief executive officer and head of the corporation and in the recess of the Board of Directors shall have the general control and management of its business and affairs, subject, however, to the right of the Board of Directors to delegate any specific powers except such as may be by the laws of the State of Connecticut exclusively conferred on the President, to any other officer or officers of the corporation. 488

VICE-PRESIDENT

(12) The Vice-Presidents in order of election in the absence of the President shall perform the duties of the President. 489

SECRETARY

(13) The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and act as clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose. In the absence of the Secretary from any meeting, the presiding officer of such meeting may appoint any person

490 *Exhibit H.*

to act as secretary thereof. The Secretary shall also perform such other duties as may be prescribed by the Board of Directors or the President.

TREASURER

(14) The Treasurer shall keep, or cause to be kept, full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation.

491

RESIGNATION

(15) Any director or officer may resign his office at any time, such resignation to be made in writing.

CORPORATE BOOKS

(16) The transfer books of the corporation may be closed by order of the Board of Directors for a period not exceeding fifteen days preceding any meeting, annual or special, of the stockholders, or

492 the day appointed for the payment of a dividend.

Exhibit H. 493

SUBSCRIPTIONS TO THE CAPITAL STOCK

of

THE H & H ELECTRIC COMPANY

WHEREAS: THE H & H ELECTRIC COMPANY has been incorporated, under the laws of the State of Connecticut;

NOW THEREFORE, WE, the undersigned do hereby severally and respectively subscribe to the number of shares of the capital stock of said corporation set opposite our respective signatures. 494

Name	*Residence*	*No. of Shares*
Samuel P. Williams	Hartford, Conn.	398
Monroe Guett	Hartford, Conn.	1
John R. Cook	Hartford, Conn.	1

WAIVER OF NOTICE OF FIRST MEETING OF INCORPORATORS AND SUBSCRIBERS

of

THE H & H ELECTRIC COMPANY 495

We, the undersigned, being all the subscribers to the capital stock and all of the incorporators of the above named corporation, incorporated under the laws of the State of Connecticut, do hereby waive all notice, whether statutory or otherwise, of the time, place and purpose of the first meeting of said corporation and do specify the 1st day of December, A. D. 1928, at 9:30 o'clock A. M. as the time and No. 15 Lewis St., Hartford, Connecticut, as the

496 *Exhibit II.*

place for said meeting and do consent to the transaction of such business as may come before the meeting, or any adjournment thereof, including the election of directors and the adoption of by-laws, the authorization of the Board of Directors to issue the shares of the unissued authorized capital stock of said corporation and to accept in full or part payment of the subscriptions therefor either cash or such property as said Board may, in its discretion, deem to be necessary to or proper for the business of this corporation, and the authorization of
497 the Board of Directors to call in the subscriptions to the capital stock heretofore or hereafter made to the full amount of such subscriptions, the same to be paid as and when called for by said Board either in cash or by the transfer of such property as may be deemed by said Board, in its discretion, to be necessary to or proper for the business of this corporation.

SAMUEL P. WILLIAMS
MONROE GUETT
JOHN R. COOK

498

Exhibit H. 499

MINUTES OF FIRST MEETING

of

INCORPORATORS AND SUBSCRIBERS

of

THE H & H ELECTRIC COMPANY

The first meeting of the corporation was held on the 1st day of December, 1928 at 9:30 o'clock A. M. at No. 15 Lewis Street, Hartford, Connecticut, pursuant to a written waiver of notice signed by all the subscribers to the capital stock and all the incorporators specifying said time and place. 500

The following incorporators and subscribers were present in person:

Name	*No. of Shares*
Samuel P. Williams	398
Monroe Guett	1
John R. Cook	1

being all the incorporators and subscribers of the corporation.

Mr. Samuel P. Williams called the meeting to order, and on motion was elected Chairman, and Mr. John R. Cook was chosen Temporary Clerk. 501

The Chairman reported that the Certificate of Incorporation of this corporation was filed in the office of the Secretary of the State of Connecticut on the 30th day of November, 1928, and that said Secretary of State had examined the same and endorsed thereon the word "Approved" with his name and official title, and that prior to such filing the franchise tax required by law had been paid, and that a certified copy of such Certificate of Incorporation

502 *Exhibit H.*

had been filed in the office of the Town Clerk in the Town of Hartford, the said Hartford being the town in which this corporation is located.

The Temporary Clerk presented a written waiver of notice of this meeting signed by all the subscribers to the capital stock and all the incorporators of this corporation and the same was ordered to be recorded at length upon the records of this corporation.

The Chairman presented a form of by-laws for the regulation of the affairs of this corporation,
503 which were read and unanimously adopted.

The Chairman presented the original subscriptions to the stock of this corporation showing that Messrs. Samuel P. Williams, Monroe Guett and John R. Cook had subscribed for Four Hundred (400) shares of the capital stock of this corporation, the same being the full amount of capital stock with which this corporation is authorized to do business.

Messrs. Samuel P. Williams, Monroe Guett and John R. Cook were nominated for directors of the corporation to hold office until the annual meeting and until others are chosen and qualified in their
504 stead. No other nominations having been made, the meeting thereupon proceeded to vote upon the said nominations and a ballot having been had the Chairman announced that the above named persons had been unanimously elected Directors of this corporation for the term aforesaid.

The Board of Directors were authorized to call in the subscriptions to the capital stock to the full amount of such subscriptions, the same to be paid as and when called for by said Board, either in cash or by the transfer of such property as may be deemed by said Board, in its discretion, to be neces-

Exhibit H.

505

sary to or proper for the business of this corporation.

Upon motion duly made and seconded, it was resolved that the seal, an impression of which is hereto affixed, be adopted as the (Seal) corporate seal of this corporation.

Upon motion duly made and seconded, it was ordered that copies of each of the following papers, or the originals thereof, be inserted in the minute book for the purpose of reference:

506

(1) Certificate of Incorporation.
(2) By-Laws.
(3) Waiver of Notice of this Meeting.
(4) Subscriptions to Stock.

No further business being presented, the meeting thereupon adjourned.

Attest:

JOHN R. COOK
Temporary Clerk

507

508 *Exhibit H.*

WAIVER OF NOTICE OF FIRST MEETING
OF THE BOARD OF DIRECTORS OF
THE H & H ELECTRIC COMPANY

We, the undersigned, being all the directors of The H & H Electric Company, hereby waive notice of the time, place and purpose of a meeting of the Board of Directors of said corporation and designate the 1st day of December 1928 at 9:45 o'clock A. M. as the time and No. 15 Lewis Street, Hartford, Connecticut as the place of said meeting.

509 Dated this 1st day of December, 1928.

SAMUEL P. WILLIAMS
MONROE GUETI
JOHN R. COOK

MINUTES OF FIRST MEETING

of

BOARD OF DIRECTORS

of

510 THE H & H ELECTRIC COMPANY

The first meeting of the Board of Directors of THE H & H ELECTRIC COMPANY was held at No. 15 Lewis Street, Hartford, Connecticut, on the 1st day of December, 1928, at 9:45 o'clock A. M., pursuant to a written waiver of notice, signed by all the Directors, fixing said time and place.

All members of the Board were present.

Exhibit H.

The following were unanimously elected to the offices set before their respective names, to hold office until the next annual meeting of the corporation and until their successors are respectively elected and qualified: 511

President and Treasurer Samuel P. Williams
Secretary John R. Cook

The President thereupon took the chair and the Secretary acted as secretary of this meeting.

The minutes of the first meeting of the incorporators and subscribers to the capital stock of the corporation were thereupon read. 512

On motion made and duly seconded it was unanimously:

VOTED: That an office of this corporation be established and maintained at the banking office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, and that Ray L. Makin be and he hereby is designated as the agent of this corporation in charge of said office upon whom process against it may be served; that meetings of the Board of Directors be held either at said banking office or elsewhere in Connecticut as the Board shall from time to time order, and that said trust company be and it hereby is appointed transfer agent of the stock of this company. 513

It was thereupon unanimously:

VOTED: Full payment of all subscriptions to the capital stock of this company is hereby called, payable in cash.

514 *Exhibit H.*

There was thereupon paid into the treasury of the company Two Thousand Dollars ($2,000) in cash, being the full amount of capital with which this company has stated in its Certificate of Incorporation as being the amount with which it would begin business, and being in full of all subscriptions to its stock, viz:

Mr. Samuel P. Williams' subscription for	398 shares
Mr. Cook's and Mr. Guett's subscriptions for	1 share each
	400 shares

515

It was thereupon:

VOTED: To issue to the respective subscribers certificates of shares or receipts pending preparation of permanent certificates.

The form of stock certificate of this corporation was presented and the same approved.

The Certificate of Organization of this corporation was thereupon prepared and filed as required by law.

It was ordered that copies of the following papers, or originals thereof, be inserted in the minute book for reference:

516

1. Waiver of Notice
2. Certificate of Organization.

On motion duly made and seconded the meeting recessed to reconvene on adjournment of meeting of stockholders of the corporation to be held forthwith.

JOHN R. COOK
Secretary

Attest:

Exhibit H.

CERTIFICATE OF ORGANIZATION

of

THE H & H ELECTRIC COMPANY

The undersigned, a majority of the directors of The H & H Electric Company, located in the Town of Hartford hereby certify as follows:

First: That the amount of the authorized capital stock subscribed for is four hundred (400) shares, the same being all common stock of five (5) Dollars each, and upon all of which there has been paid not less than the full amount of Two Thousand (2,000) Dollars, with which the incorporators in the certificate of incorporation stated the company would begin business.

Second: That the amount paid thereon in cash is Two Thousand (2,000) Dollars.

Third: That the amount paid thereon in property other than cash is nothing.

Fourth: That Five (5) Dollars has been paid upon each share subscribed for.

Fifth: That the name, residence and post-office address of each of the original subscribers to said stock, with the number and class of shares subscribed for by each are as follows:

Name	*Residence*	*P. O. Address*	*No. of Shares*
Samuel P. Williams	Hartford, Conn.	Hartford, Conn	398
Monroe Guett	" "	" "	1
John R. Cook	" "	" "	1

Exhibit H.

Sixth: That the directors and officers of said corporation have been duly elected and that its by-laws have been adopted.

Seventh: That the name, residence and post-office address of each of the officers and directors of said corporation are as follows:

Name	*Residence*	*P. O. Address*
President		
Samuel P. Williams	Hartford, Conn.	Hartford, Conn.
Treasurer		
Samuel P. Williams	Hartford, Conn.	Hartford, Conn.
Secretary		
John R. Cook	Hartford, Conn.	Hartford, Conn.
DIRECTORS:		
Samuel P. Williams	" "	" "
Monroe Guett	" "	" "
John R. Cook	" "	" "

Eighth: That the location of its principal office in this state is the banking office of Phoenix State Bank & Trust Company, No. 803 Main Street, Hartford, Connecticut and the name of the agent or person in charge thereof upon whom process against it may be served is Ray L. Makin.

Dated at Hartford this 1st day of December, 1928.

SAMUEL P. WILLIAMS
JOHN R. COOK
A Majority of the Directors.

Exhibit H.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Hartford, December 1, 1928

Personally appeared Samuel P. Williams and John R. Cook, signers of the foregoing Certificate of Organization, a majority of the directors of The H & H Electric Company, and made oath to the truth of the same, before me,

ALICE C. PETERSON
Notary Public
(Seal)

MINUTES OF MEETING OF STOCKHOLDERS

of

THE H & H ELECTRIC COMPANY

A meeting of the stockholders of THE H & H ELECTRIC COMPANY was held on the 1st day of December, 1928, at 10:00 A. M. at No. 15 Lewis Street, Hartford, Connecticut.

All stockholders were present, viz.: Messrs. Williams, Cook and Guett.

The following vote was unanimously passed:

VOTED: That the Board of Directors of this corporation is hereby authorized to issue all or any part of its unissued authorized capital stock; to receive and approve all additional subscriptions for the same and to accept in full

526 *Exhibit H.*

or part payment of such subscriptions either cash or such property as the Board in its discretion may deem necessary or proper for the business of the corporation.

All stockholders waived their several and respective rights as stockholders to subscribe to such additional stock as the Board of Directors may decide to issue under the authority of the foregoing vote.

527 The President presented to the meeting the plan of reorganization as set forth in the minutes of the Board of Directors of Arrow-Hart & Hegeman, Inc., a copy of which is annexed to these minutes. The plan as therein outlined was, on motion duly made and seconded, unanimously approved and the Directors were authorized to issue any or all of the unissued authorized capital stock of this corporation, viz., 199,600 shares to Arrow-Hart & Hegeman, Inc. or to the stockholders thereof pro rata in exchange for the property of said Arrow-Hart & Hegeman, Inc. to be transferred to this corporation under such plan of reorganization.

528 The President suggested that in order to fully carry out such plan of reorganization it was advisable that the stockholders of this company turn in the stock owned by them, viz., 400 shares, to this corporation in order to enable it to make the exchange as outlined in such plan of reorganization for the property of Arrow-Hart & Hegeman, Inc. to be transferred to this company under such plan of reorganization, viz., 20,000 of the common shares of The Hart & Hegeman Mfg. Company, par $25 each.

Exhibit H.

529

The suggestion of the President was unanimously approved and each stockholder for himself agreed to transfer to this corporation on demand shares issued to him or to which he was entitled by reason of the payment of his subscription.

No further business appearing the meeting thereupon adjourned.

JOHN R. COOK
Secretary

Attest:

530

11/30/28

A special meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated was duly held, pursuant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, 803 Main Street, Hartford, Connecticut, on Friday, November 30, 1928 at 4 o'clock in the afternoon.

The following directors were present, namely Messrs. Grier, Burt, Chase, Day, Glazier, Guett, Perkins, Stevenson and Williams.

There were also present the companies' Counsel, 531
Messrs. Arthur L. Shipman and Charles Welles Gross.

The President reported that since the last meeting of this Board on November 10, 1928, the officers and counsel have been at work upon the formulation of the plan of reorganization and have considered the matter both from the viewpoint of satisfying the criticism of the Federal Trade Commission and of meeting the income tax situation. Mr. Arthur Randall, C. P. A., of this City has been of

532 *Exhibit H.*

great assistance to your officers and counsel in suggesting and in working out the details of the plan hereinafter set forth. They have also conferred with Colonel Robert H. Montgomery of New York, the well known authority on Income Tax Law and Procedure, and have received from Colonel Montgomery an opinion dated November 27, 1928, that the plan outlined in that opinion will involve no taxable gain either to the corporation or its stockholders at this time.

533 The outline of the plan is as follows:

(a) By vote of its stockholders Arrow-Hart & Hegeman, Incorporated will transfer to a new Arrow Company, to be known as The Arrow Manufacturing Company, all the shares of the common stock of the Arrow Electric Company in exchange for all the shares of The Arrow Manufacturing Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share, par value $5.00, for every share of Arrow-Hart & Hegeman, Inc. now held by the stockholders. Likewise, Arrow-Hart & Hegeman, Incorporated will transfer to a new Hart
534 & Hegeman Company, to be known as The H & H Electric Company, all the shares of the common stock of The Hart & Hegeman Manufacturing Company in exchange for all the shares of The H & H Electric Company, which will be issued directly to the stockholders of Arrow-Hart & Hegeman, Incorporated in the proportion of one share of The H & H Electric Company, par value $5.00 for each share of Arrow-Hart & Hegeman, Incorporated now held by the stockholders. This will be done without a surrender of the shares of Arrow-Hart & Hegeman, Incorporated.

Exhibit H.

To accomplish this first step a special stockholders' meeting of Arrow-Hart & Hegeman, Incorporated will be called and held on December 6, 1928.

(b) When such exchange of shares in conformity to this plan of reorganization has been consummated prior to December 10, 1928, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at the meeting called for December 10, 1928, or at an adjournment thereof, that corporation may be dissolved. It will then have no assets and no liabilities, and its dissolution will be a purely formal matter.

(c) There will then be in existence four corporations,—The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow Manufacturing Company and the new H & H Electric Company. The corporate stock of these four companies will then be held as follows:

Name of Company	*Stock*				*Stockholders*
Arrow Electric Company	30,000	shs.	Com., par	$25	Arrow Mfg. Co.
	18,950	"	Pfd. "	100	Public
Hart & Hegeman Mfg. Co.	20,000	"	Com. "	25	H&H Elec. Co.
	13,333	"	Pfd. "	100	Public
Arrow Mfg. Co.	200,000	"	Com. "	5	Public
H. & H. Electric Co.	200,000	"	" "	5	Public

The plan provides that these four companies, all having manufacturing charters, will make an agreement for consolidation or merger by vote, in the first instance, of the Board of Directors of each of the four companies, to be dated about December 10, 1928 and to be submitted to stockholders at a meeting to be called for each corporation on December

538 *Exhibit H.*

31, 1928 at which time the agreement, if approved by the stockholders, will be effective, a particularly advantageous time as the close of the tax year. By this agreement of merger or consolidation it will result that the merged or consolidated corporation will have outstanding one class of preferred stock equal in the aggregate to the number of shares of preferred stock of Arrow Electric Company and Hart & Hegeman Manufacturing Company now outstanding, so that the public owning the preferred stock will receive one share of preferred
539 stock, of the par value of $100., for each share of preferred stock of The Arrow Electric Company now outstanding, and one share of preferred stock for each share of preferred stock of The Hart & Hegeman Manufacturing Company now outstanding; that the common stock of the merged or consolidated corporation will be 200,000 shares, of the par value of $10., so that one share of the common stock of the merged or consolidated corporation will be issued in exchange for a unit of one share of The Arrow Manufacturing Company common, of the par value of $5. and one share of The H & H Electric Company common, par value $5, the net result
540 on common stock being that the stockholders of Arrow-Hart & Hegeman, Incorporated will ultimately hold one share of the merged or consolidated corporation, of the par value of $10., for every one share of Arrow-Hart & Hegeman, Incorporated now held by them.

The President further reported that, to accomplish this entire plan of reorganization before the close of the calendar year, it is necessary that notices for such a meeting be issued forthwith, to be held December 6th, and in order that these notices

541

may be printed and be issued tomorrow, December 1st, counsel have approved a form of letter to the stockholders of Arrow-Hart & Hegeman, Incorporated, a form of proxy running to the same six gentlemen who have been named in the proxy for the meeting of December 10th, and a form of call for the meeting, all of which he then submitted for consideration and approval by this meeting.

The matter was then discussed and it was then, on motion made by Mr. Burt and seconded by Mr. Chase,

542

VOTED: That the plan of reorganization as outlined by the President be approved by this Board and that a special meeting of stockholders be called for December 6, 1928, to consider and adopt such plan and to authorize the exchange of shares therein provided for.

On motion made by Mr. Chase and seconded by Mr. Stevenson, it was further

VOTED: That the form of the call for such meeting, the form of Power of Attorney Consent and proxy submitted and the form of letter to be sent to stockholders, signed by Mr. Grier, as President and Mr. Williams, as Vice President, be and they are hereby approved.

543

In order to prepare papers for the carrying out of such plan, if adopted, and in order to expedite the voting at both meetings on December 6th and December 10th by proxy, it was on motion made by Mr. Day and seconded by Mr. Burt,

VOTED: That in accordance with the by-laws of this company, the stock transfer books of this com-

544 *Exhibit H.*

pany be closed from this 30th day of November, 1928, until the final adjournment of the stockholders meeting called for December 10, 1928.

The meeting adjourned at 5:30 o'clock P. M.

Attest:

BENJAMIN C. PERKINS
Secretary

545

MINUTES OF MEETING

of

THE BOARD OF DIRECTORS

of

THE H & H ELECTRIC COMPANY

The Board of Directors of THE H & H ELECTRIC COMPANY reconvened their meeting at No. 15 Lewis Street on December 1, 1928 at 10:15 A. M., all of the Directors being present, viz.: Messrs. Williams, Cook and Guett.

546 The minutes of the meeting of the stockholders of the company held this day immediately preceding the reconvention of this meeting were read.

In accordance with and for the purpose of carrying out the plan of reorganization outlined in the minutes of said stockholders' meeting, on motion duly made and seconded, the following vote was unanimously passed:

VOTED: The officers of this company are hereby authorized to issue to Arrow-Hart & Hegeman, Inc. or to its several and respective

547

stockholders in proportion to their holdings of stock thereof, share for share, certificates of stock of this corporation to the full amount of its unissued and authorized capital stock, viz., 199,600 shares, and to deliver the same together with the 400 shares of this corporation now issued, to such corporation or to the stockholders thereof, in exchange for and on transfer to this corporation by Arrow-Hart & Hegeman, Inc. of all common shares of capital stock of The Hart & Hegeman Mfg. Company, viz., 20,000 shares, par $25, now held by said Arrow-Hart & Hegeman, Inc.

548

And we, a majority of the Directors of The H & H Electric Company, hereby state over our hands that in our opinion said 20,000 shares of authorized Common capital stock of The Hart & Hegeman Mfg. Company has a value in excess of $1,000,000, being the par value of the capital stock of this company to be issued and delivered in exchange therefor.

SAMUEL P. WILLIAMS
MONROE GUEIT
JOHN R. COOK

549

No further business appearing, the meeting thereupon adjourned.

JOHN R. COOK
Secretary

Attest:

550

Exhibit H.

WAIVER OF NOTICE OF SPECIAL MEETING

of

STOCKHOLDERS OF

THE H & H ELECTRIC COMPANY

The undersigned, being all the stockholders of The H & H Electric Company, do hereby waive all notice of a special meeting of the stockholders of that company to be held on the 6th day of December, 1928 at 11:30 o'clock in the forenoon, at the
551 office of the corporation, No. 803 Main Street, Hartford, Connecticut, and do consent to the transaction of any business which may come before such meeting, including a proposal to amend the sixteenth paragraph of the by-laws of this company.

Dated at Hartford, this 6th day of December, 1928.

SAMUEL P. WILLIAMS
MONROE GUETT
JOHN R. COOK

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Exhibit H.

553

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS

OF

THE H & H ELECTRIC COMPANY

A special meeting of the stockholders of The H & H Electric Company was duly held, pursuant to waiver signed by each and every stockholder, at the office of the company, No. 803 Main Street, Hartford, Connecticut, on December 6, 1928, at 11:30 o'clock in the forenoon.

All the stockholders were present, viz: Messrs. Williams, Guett and Cook. 554

The President reported that pursuant to the plan of reorganization involving the merger of four companies it was deemed essential that the stock books of this company should be closed from this date until the adjournment of a meeting of its stockholders which it is expected will be called to be held on December 31, 1928, and that to close such books for such period it would be necessary to amend the by-laws as now existing.

On motion duly made and seconded, it was then unanimously voted that paragraph No. 16 of the by-laws of this company as now existing be and the same is hereby amended to read as follows: The 555 transfer books of this corporation may be closed by order of the board of directors for such period preceding any stockholders' meeting or preceding the day appointed for the payment of a dividend as said board of directors may deem necessary or proper in any case.

No further business appearing, the meeting thereupon adjourned.

Attest: J. R. COOK
Secretary

556 *Exhibit H.*

WAIVER OF NOTICE OF SPECIAL MEETING
OF THE DIRECTORS OF
THE H&H ELECTRIC COMPANY

The undersigned, constituting all the directors of The H & H Electric Company, hereby waive notice of a special meeting of its board of directors to be held at the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, being the corporate office of this company, on Thursday, December 6, 1928, at 12:00 o'clock noon.

557 Dated at Hartford, this 6th day of December, 1928.

SAMUEL P. WILLIAMS
MONROE GUETT
JOHN R. COOK

MINUTES OF SPECIAL MEETING OF BOARD
OF DIRECTORS OF
THE H & H ELECTRIC COMPANY

558 A special meeting of the board of directors of The H & H Electric Company was duly held, pursuant to waiver signed by all the directors, at the corporate office of the company in the office of Phoenix State Bank and Trust Company, No. 803 Main Street, Hartford, Connecticut, on Thursday, December 6, 1928, at 12:00 o'clock noon.

All the directors were present, viz. Messrs. Williams, Guett and Cook.

Mr. Samuel P. Williams, the President, presided.

The President then stated that, in accordance with the plan of reorganization previously adopted

Exhibit H.

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by this company and in accordance with the offer made by this corporation to exchange its shares, the stockholders of Arrow-Hart & Hegeman, Incorporated have this day at a special meeting passed a vote approving and adopting the plan of reorganization above referred to and have transferred to this company Twenty Thousand (20,000) shares, par Twenty-five (25) Dollars each, of the common stock of The Hart & Hegeman Manufacturing Company, being all the common stock of that company outstanding, in exchange for all the capital stock of this company, consisting of Two Hundred Thousand (200,000) shares, of the par value of Five (5) Dollars each.

560

By said vote this company was directed to issue and deliver said Two Hundred Thousand (200,000) shares to and in the names of the several and respective stockholders of Arrow-Hart & Hegeman, Incorporated pro rata and in the proportion of one (1) share of the stock of this company for each one (1) share of stock of Arrow-Hart & Hegeman, Incorporated now held by its stockholders, as shown by the stock books of that company, of which an attested list has been furnished to this company by the secretary of Arrow-Hart & Hegeman, Incorporated.

561

The President then presented to the meeting an attested copy of the vote of the stockholders of Arrow-Hart & Hegeman, Incorporated and the attested list of its stockholders above referred to.

The following vote was then unanimously passed:

VOTED: That whereas Arrow-Hart & Hegeman, Incorporated has transferred to this company all the shares of the common stock of The Hart & Hegeman Manufacturing Company con-

562 *Exhibit H.*

sisting of Twenty Thousand (20,000) shares, of the par value of Twenty-five (25) Dollars each, in exchange for all the shares of this company pursuant to the plan of reorganization heretofore adopted; and whereas said Arrow-Hart & Hegeman, Incorporated has directed this company to issue said Two Hundred Thousand (200,000) shares of the capital stock of this company to and in the names of the several and respective stockholders of Arrow-Hart & Hegeman, Incorporated pro rata and in the proportion of one (1) share of the stock of this
563 company for each one (1) share of Arrow-Hart & Hegeman, Incorporated now held by such stockholders, as shown by an attested list of its stockholders taken from the stock books of Arrow-Hart & Hegeman, Incorporated; now therefore the vote passed by this board at its meeting held on December 1, 1928 be and the same is hereby amended to read that the officers of this company are hereby authorized and directed to issue to the stockholders of Arrow-Hart & Hegeman, Incorporated, as shown on an attested list of its stockholders, which has been furnished to this company, all
564 the stock of this company now unissued, viz: One Hundred Ninety-nine Thousand Six Hundred (199,600) shares and to deliver the same together with the Four Hundred (400) shares heretofore issued to such stockholders named on such list, the same being so issued by direction of Arrow-Hart & Hegeman, Incorporated in exchange for all the common stock of The Hart & Hegeman Manufacturing Company which has been transferred to this corporation pursuant to such plan of reorganization.

Exhibit H.

565

In order to expedite the consummation of the plan of reorganization and the merger of the companies as contemplated therein, it was unanimously voted that in accordance with the by-laws of this company as amended this day at a special meeting of its stockholders stock transfer books of this company be and they are hereby closed until the close of business on December 31, 1928 and thereafter until the final adjournment of a special meeting of stockholders to be called to adopt an agreement of consolidation and merger of this company with other companies, this board being of the opinion that the closing of such books is necessary to expedite the consummation of such plan.

566

The President then called attention to the fact that as this company owned all the common stock of The Hart & Hegeman Manufacturing Company, it would be necessary, in accordance with Article 7 of the by-laws of this company, to designate agents for this company to act as directors of The Hart & Hegeman Manufacturing Company. It was then unanimously voted that the following be and they hereby are designated agents of this company, eligible to be chosen as directors of The Hart & Hegeman Manufacturing Company, viz: Robert C. Buell, George H. Burt, Charles Welles Gross, Samuel P. Williams and John R. Cook.

567

Mr. Arthur C. Mason, Vice-President of Phoenix State Bank and Trust Company, Transfer Agent, then appeared before the meeting of this board and reported that in accordance with the vote this day passed the Two Hundred Thousand (200,000) shares of the capital stock of this company had been issued pro rata and in the proportion of one (1) share of this company for each one (1) share of Arrow-Hart & Hegeman, Incorporated, to the

568 stockholders appearing upon the attested list of stockholders of Arrow-Hart & Hegeman, Incorporated.

No further business appearing, the meeting thereupon adjourned:

Attest:

J. R. COOK
Secretary

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569 At a special meeting of the stockholders of Arrow-Hart & Hegeman, Incorporated duly held December 6, 1928 the following vote was passed by a vote of more than two-thirds of the outstanding stock:

VOTED: That the Plan of Reorganization submitted to and approved by the Board of Directors of this Company at their meeting on November 30, 1928, as set forth in the minutes of that meeting, be and hereby is approved and adopted;

That pursuant thereto this corporation transfer and convey to The Arrow Manufacturing Company
570 all the holdings of this corporation in the common stock of The Arrow Electric Company, consisting of 30,000 shares (par $25 each) in exchange for all the capital stock of The Arrow Manufacturing Company, consisting of 200,000 shares (par $5 each), and that said The Arrow Manufacturing Company be and it is hereby directed to issue and deliver said 200,000 shares to and in the names of the several and respective stockholders of this corporation pro rata and in the proportion of one share of the Arrow Manufacturing Company for each

Exhibit H.

571

one share of Arrow-Hart & Hegeman, Incorporated now held by them as shown by the stock books of this company, of which an attested list shall be furnished to The Arrow Manufacturing Company by the Secretary of this company;

That pursuant thereto this corporation transfer and convey to The H. & H. Electric Company all the holdings of this corporation in the common stock of The Hart & Hegeman Manufacturing Company, consisting of 20,000 shares (par $25 each) in exchange for all the capital stock of The H. & H. Electric Company consisting of 200,000 shares (par $5 each), and that said The H. & H. Electric Company be and it is hereby directed to issue and deliver said 200,000 shares to and in the names of the several and respective stockholders of this corporation pro rata and in the proportion of one share of The H. & H. Electric Company for each one share of Arrow-Hart & Hegeman, Incorporated now held by them as shown by the stock books of this company, of which an attested list shall be furnished to The H. & H. Electric Company by the Secretary of this company, and

572

That the President of this company, or the Treasurer, be and he is hereby authorized and directed to execute and deliver all instruments necessary or convenient to carry out such exchange of shares.

573

Attest:

(SEAL)

BENJAMIN C. PERKINS
Secretary

574 *Exhibit H.*

December 8, 1928

A special meeting of the Board of Directors of The H & H Electric Company will be held at the office of the Phoenix State Bank and Trust Company, #803 Main Street, on Tuesday, December 11, 1928 at 2 o'clock in the afternoon, to consider and approve the agreement for consolidation or merger of:

The Arrow Electric Company
The Hart & Hegeman Manufacturing Company
The Arrow Manufacturing Company
575 The H & H Electric Company

pursuant to the plan of reorganization of which you have knowledge; and to transact any other business incidental to the same matter.

Your presence is earnestly desired as the agreement, if approved, must be signed by at least a majority of the Board.

S. P. WILLIAMS
President

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576 MINUTES OF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE H & H ELECTRIC COMPANY

At a special meeting of the Board of Directors of The H & H Electric Company held at the office of Phoenix State Bank & Trust Company, No. 803 Main Street, Hartford, on Tuesday, December 11, 1928, at 2:00 o'clock P. M., pursuant to the foregoing call, the following directors were present: Messrs. Williams, Guett and Cook.

Exhibit H.

577

The President stated that the meeting was called to consider and act upon a proposed agreement for the consolidation and merger of this company, The Arrow Manufacturing Company, The Hart & Hegeman Manufacturing Company and The Arrow Electric Company, pursuant to a plan of reorganization, an outline of which was approved at a stockholders' meeting of this company, held December 1, 1928, and which appears in the minutes of said meeting.

The President presented written form of agreement of consolidation or merger of said companies, copy of which is annexed to these minutes. The same was fully considered and discussed. On motion duly seconded the form of said agreement was approved and signed by the individual directors of the company under its corporate seal.

578

Thereupon on motion duly seconded it was unanimously voted to submit said agreement to the stockholders of this company and that a meeting thereof be called for the purpose of considering the same, to be held at the office of Phoenix State Bank and Trust Company No. 803 Main Street, Hartford, on Monday, December 31, 1928, at 1:00 o'clock P. M., and that notice of the time, place, and object of such meeting be mailed forthwith to the last known post office address of each of the stockholders of this corporation, and that such notice be published once in each week for three successive weeks in the Hartford Times.

579

Form of call for said meeting was presented and the same was approved:

The President reported that a meeting of the stockholders of The Hart & Hegeman Manufacturing Company would be held on December 31, 1928 for the purpose of considering said agreement of consolidation and merger. It was thereupon unani-

580 *Exhibit H.*

mously voted that the executive officers of this company or any one of them be and they hereby are authorized to vote the stock of The Hart & Hegeman Manufacturing Company held in the treasury of this company in favor of resolution approving such merger and consolidation.

No further business appearing, the meeting thereupon adjourned.

JOHN R. COOK
Secretary

581

MINUTES OF SPECIAL MEETING

OF THE

STOCKHOLDERS

OF

THE H & H ELECTRIC COMPANY

A special meeting of the Stockholders of The H & H Electric Company was duly held, pursuant to notice, in the Directors' Room of the Phoenix State Bank and Trust Company, No. 803 Main
582 Street, Hartford, Connecticut, on Monday, December 31, 1928 at 1 o'clock in the afternoon.

The call for the meeting was read and ordered recorded with the minutes of the meeting.

The Secretary made return that a copy of this call was mailed on December 11, 1928, twenty days in advance of the meeting, to each stockholder of record, addressed to him at his last known address registered on the books of the company, and that a copy of such call was published once in each week for three successive weeks preceding such meeting

in the Hartford Daily Times, a newspaper of this city, having a circulation in the Town of Hartford, in which said corporation is located. He also produced a publisher's affidavit from the Hartford Times, showing the publication. 583

The Secretary also presented an alphabetical list of the stockholders of the corporation, as required by law.

Messrs. Guett and Burt were then duly appointed a committee on proxies and tellers, and as such committee they reported that 177,871 shares of the stock of this company issued and outstanding were represented in person or by proxy at this meeting. 584

The minutes of a special meeting of the Directors of this company, duly held on December 11, 1928, were then read, showing the action of the Board of Directors in executing an agreement entitled "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company", dated December 11, 1928. An original of this agreement signed by a majority of the directors of each of the four companies, parties to the agreement, with certificates attached showing that such merger or consolidation had been duly approved at stockholders' meetings of The Arrow Electric Company, The Hart & Hegeman Manufacturing Company and The Arrow Manufacturing Company, was then presented to the meeting. 585

The President stated that this agreement for the consolidation or merger of the four corporations named was the final step in the consummation of the Plan of Reorganization which was approved by the stockholders of this company at their meeting held December 1, 1928, and set out at length in a

586 *Exhibit H.*

copy of the minutes of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 30, 1928, appended to the minutes of that meeting of December 1, 1928. It was then further stated that, in pursuance of that plan and in accordance with the vote of the stockholders of Arrow-Hart & Hegeman, Incorporated, that company transferred to The Arrow Manufacturing Company all the common stock of The Arrow Electric Company in exchange for all the capital stock of The Arrow Manufacturing Company which was
587 issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, as outlined in that plan; and that likewise Arrow-Hart & Hegeman, Incorporated had transferred to the H. & H. Electric Company all the common stock of The Hart & Hegeman Manufacturing Company in exchange for all the capital stock of The H. & H. Electric Company which was issued to the stockholders of Arrow-Hart & Hegeman, Incorporated, thus carrying out paragraph (a) of that plan:

That after such exchange of shares, in conformity to such Plan of Reorganization, had been consummated the stockholders of Arrow-Hart & Hegeman, Incorporated, at a meeting held December 10, 1928,
588 voted to dissolve the corporate existence of that corporation:

And that now, in conformity to paragraph (c) of that Plan of Reorganization, the directors of the four companies named in the agreement had agreed upon the consolidation or merger of the four companies, from which it will result that one share of the preferred stock of the consolidated corporation will be issued in lieu of each one share of preferred stock of The Arrow Electric Company, and one share of the preferred stock of the consoli-

dated corporation will be issued in lieu of each one share of the preferred stock of The Hart & Hegeman Manufacturing Company, and that the common stock of the consolidated or merged corporation consisting of 200,000 shares, of the par value of $10.00 each, will be issued in the following proportions:

One-half of one share, in lieu of one share of the common stock of The Arrow Manufacturing Company, of the par value of $5.00 each, and one-half of one share in lieu of one share of the common stock of The H. & H. Electric Company, of the par value of $5.00 each. 590

The matter was then discussed and the following motion was then offered:

VOTED: That the agreement entitled, "Agreement of Consolidation or Merger between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company", dated December 11, 1928, and executed by a majority of the directors of each of such four corporations under the corporate seals of the respective corporations, be and the same is hereby ratified and approved, and the officers of this company be and they are hereby authorized to take the necessary steps to have such agreement approved by the Secretary of the State of Connecticut and to consummate such consolidation. 591

The President stated that under the provisions of Section 3522 of the General Statutes of Connecticut, such agreement to be effective must be approved by a stock vote of at least two-thirds of all the outstanding stock of each class of each of

592 *Exhibit H.*

the four companies. Accordingly, a stock vote was had and the tellers reported as follows:

Total number of shares outstanding	200,000
Number of shares necessary for passage of the vote	133,334
Number of shares voting to approve	177,871
Number of shares voting not to approve	0

The President then declared the resolution to approve the Agreement of Consolidation or Merger
593 had been passed and the agreement approved by a vote of more than two-thirds of all the outstanding stock of this corporation.

It was then on motion duly made and seconded unanimously

VOTED: That the Secretary of this corporation be and he is hereby authorized to execute the certificate attached to the Agreement of Consolidation or Merger, showing the action taken this day by the stockholders and to affix the seal of this corporation thereto.

594 The meeting then adjourned.

Attest:

JOHN R. COOK
Secretary

Exhibit H.

595

Ballot

Special Meeting of Stockholders of The H & H Electric Company, December 31, 1928.

Ballot to approve the "Agreement for the Consolidation or Merger between the Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company".

Voted Yes

177,871 shares represented by proxies

596

L. P. BROADHURST
WM. R. C. CORSON
JOSEPH R. ENSIGN
P. B. GALE
J. O. ENDERS
ROBERT B. NEWELL

Proxies for Holders of Shares of the above number.

597

598 **Exhibit I.**

AGREEMENT OF CONSOLIDATION OR MERGER BETWEEN THE ARROW ELECTRIC COMPANY, THE HART & HEGEMAN MANUFACTURING COMPANY, THE ARROW MANUFACTURING COMPANY AND THE H. & H. ELECTRIC COMPANY.

We, the undersigned, constituting a majority of the directors of each of the following named corporations organized under the statute laws of the State of Connecticut, to wit:

The Arrow Electric Company,
The Hart & Hegeman Manufacturing Com-
599 pany,
The Arrow Manufacturing Company, and
The H. & H. Electric Company,

all located in the Town of Hartford, in the State of Connecticut, for the purpose of effecting a consolidation and merger of the above-named corporations under and by virtue of the provisions of the statute laws of said state, said corporations being engaged in business of the same or a similar nature, hereby enter into an agreement as follows:

First. That the name of the consolidated corporation shall be "The Arrow-Hart & Hegeman Electric Company."
600

Second: That the following are the names and places of residence of all of its first directors:

Name	*Residence*
Edward R. Grier	Hartford, Conn.
Samuel P. Williams	" "
Benjamin C. Perkins	" "
Monroe Guett	" "
George H. Burt	" "
Charles E. Chase	West Hartford, Conn.
Arthur P. Day	Hartford, Conn.
Daniel J. Glazier	" "
George S. Stevenson	" "

Exhibit I.

601

Third. That said corporation and its principal office or place of business is to be located at No. 103 Hawthorne Street, in the town of Hartford in the State of Connecticut, and the agent or person in charge thereof on whom process against it may be served is Benjamin C. Perkins.

Fourth. That the nature of the business to be transacted, and the purposes to be promoted or carried out, by said corporation, are as follows:

(a) To manufacture, buy, sell and deal in goods, wares, merchandise, appliances, devices, tools and implements of every and any nature, kind or description whatever; 602

(b) To buy or otherwise acquire, use and deal in letters patent and patent rights of the United States and foreign countries relating to such appliances, devices, tools or implements or processes for the manufacture thereof;

(c) To buy or otherwise acquire, use and deal in, so far as by law permitted, trademarks and trade labels granted by the United States of America and by foreign countries, relating to the businesses conducted by the corporation.

603

(d) To subscribe for, purchase or otherwise acquire, hold, sell, exchange, assign, transfer, pledge or otherwise dispose of shares of the capital stock, bonds, debentures, obligations or securities of any kind of any public or private corporation or of any state or territory or of the United States or of any foreign country, and while the owner thereof to exercise and enjoy all or any of the rights, privileges and benefits of ownership including the right to vote thereon and to receive and use for the pur-

604 *Exhibit I.*

poses of this corporation and/or to distribute in dividends the income from such shares, bonds, debentures, obligations or securities of any kind and the income of and/or gains from sales of such property; provided, however, that nothing in these articles shall give this corporation the power to sell or negotiate its own choses in action or to sell, guarantee or negotiate the choses in action of other persons or corporations as investments or as a business, or to do the business of an investment company as the same is defined in Chapter 71 of the
605 General Statutes of 1918, or in any act amending said Chapter or any section thereof.

Fifth. That the amount of the authorized capital stock of said consolidated or merged corporation shall be Seven Million, Eighty-three Thousand, Three Hundred Dollars ($7,083,300) divided into Three Hundred and Seventy-five Thousand (375,000) shares of common stock of the par value of Ten Dollars ($10) each, and Thirty-three Thousand, Three Hundred Thirty-three (33,333) shares of preferred stock of the par value of One Hundred Dollars ($100) each, the nature of the preference of the preferred stock being as follows:

606 The holders of said preferred shares shall be entitled to cumulative dividends out of the net profits or surplus of the company at the rate of six and one-half per cent. (6½%) per annum and no more, cumulative from October 1, 1928, payable quarterly on the first days of January, April, July and October of each year, beginning January 1, 1929, before any dividend shall be set aside or paid on the common stock, and to priority in payment of principal out of the assets of the company over the comman stock for the full face value of said preferred

607

shares plus a premium over par of Eight Dollars ($8) per share, together with all unpaid or accrued dividends due thereon in case of liquidation or dissolution of the corporation whether voluntary or involuntary.

Consent of holders of at least seventy-five per cent. (75%) of preferred stock at the time issued and outstanding must be obtained by vote of the holders thereof (a) before the corporation can issue bonds, notes or other obligations except for debts incurred in the ordinary course of business maturing not later than one (1) year from date thereof and except purchase money mortgages on 608
hereafter acquired property; and (b) before the corporation can issue additional stocks having rights as to assets and dividends equal or prior to this issue of preferred stock.

Except as stated above and as provided by statute, holders of preferred stock shall have no voting power unless default exists in the payment of six quarterly dividends on such preferred stock, in which event and so long as any default shall continue, holders of preferred shares issued and outstanding shall be entitled to elect a majority of the Board of Directors.

Holders of preferred stock shall have no right 609
to participate in any subsequent stock increase of the company and in case of its liquidation or dissolution, voluntary or involuntary, shall have no right to participate in the distribution of its assets beyond par plus eight dollars ($8) a share premium of its stock and unpaid and accrued dividends.

No dividends on common stock shall be declared or paid if the corporation is in arrears with respect to dividends on its preferred stock and/or in carrying out the provisions of its preferred stock sinking

fund hereinafter set forth. No dividends may be declared or paid on common stock out of surplus earnings except such surplus earnings as are made subsequent to October 1, 1927, by the consolidated and/or consolidating corporations. No dividends shall be declared or paid on common stock over Three Hundred Thousand Dollars ($300,000) per year if and so long as the net tangible assets of the corporation fall below the book value of Two Hundred Dollars (200) per share of the aggregate preferred stock outstanding. Current assets of the corporation may in no event be reduced either through the declaration or payment of common stock dividends or through conversion of current assets into fixed assets below Two Million ($2,200,000) while the entire issue of this preferred stock, viz Three Million, Three Hundred Thirty-three Thousand, Three Hundred Dollars ($3,333,300) is issued and outstanding. But as such issue is redeemed and retired, such requirement shall be limited to the obligation of the corporation to maintain its current assets to the value of at least three-fifths (3/5) of the par value of the outstanding preferred stock.

A sinking fund for the redemption and retirement of preferred stock by redemption or purchase shall be created out of the annual net profits of the corporation remaining after deducting therefrom all taxes assessed against it and any accrued and unpaid dividends on its preferred stock. For that purpose there shall be credited to an account, to be established by the corporation and to be called the Preferred Stock Sinking Fund Account (provided that the corporation is not in arrears in payment of preferred stock dividends), within sixty (60) days after the close of each and every calendar

Exhibit I.

613

year, beginning December 31, 1928, and annually thereafter, twenty per cent. (20%) of the net earnings of the company for the preceding year after deductions therefrom as aforesaid. Within ninety (90) days after the close of each calendar year the same shall be expended for the purchase and retirement of preferred stock outstanding, either by purchase in the open market, or, if the same cannot be so acquired for a sum not exceeding One Hundred Eight Dollars ($108) per share and accrued dividends, by exercising the right as above set forth to redeem said stock, on the next succeeding dividend date.

614

In case of redemption of said preferred stock as aforesaid, such part or portion so to be redeemed shall be determined by lot. If, within ninety (90) days after written notice to holders of preferred shares allotted for redemption as aforesaid, the same shall not be surrendered for redemption, all dividends otherwise accruing upon said preferred shares shall thereupon cease to accrue.

Said preferred stock sinking fund shall be placed in the hands of a committee for management and investment consisting of George H. Burt, Charles E. Chase, Robert B. Newell, Daniel J. Glazier and George S. Stevenson, of Hartford.

615

Preferred stock may be redeemed in whole or in part at the option of the corporation at any preferred dividend date at One Hundred Eight Dollars ($108) per share and unpaid and accrued dividends by lot and by notice to the holders thereof in accordance with the above provisions relative to the retirement and redemption of preferred stock through the application of the Preferred Stock Sinking Fund.

616 *Exhibit I.*

The corporation may purchase preferred stock either from itself (viz: the stock which may be acquired by it in the open market) or from any other stockholder, and such purchases made at any time may be credited to the quota or quotas of stock to be redeemed and retired through the application of the preferred stock sinking fund at the purchase price and dividends paid or accrued thereon when transferred to said sinking fund. Preferred stock purchased or redeemed through application of the sinking fund, however, shall be immediately retired
617 and shall not thereafter be re-issued, nor shall any preferred stock be issued in substitution therefor.

Sixth. That the amount of capital stock with which the consolidated or merged corporation shall commence business shall be Five Million, Two Hundred and Twenty-eight Thousand, Three Hundred Dollars ($5,228,300), divided into Two Hundred Thousand (200,000) shares of common stock of the par value of Ten Dollars ($10) each, and Thirty-two Thousand, Two Hundred and Eighty-three (32,283) shares of preferred stock of the par value of One Hundred Dollars ($100) each.

618 Seventh. That the duration of said corporation is unlimited.

Eighth. That the manner of converting the shares of the capital stock of each of the consolidating corporations into shares of the capital stock of the consolidated or merged corporation is as follows:

Whereas, at the date of this agreement The Arrow Electric Company has capital stock outstanding as follows:

Exhibit I.

Thirty Thousand (30,000) shares of common stock, of the par value of Twenty-five Dollars ($25) each, all of which is owned by The Arrow Manufacturing Company, a party to this agreement, and Eighteen Thousand Nine Hundred and Fifty (18,950) shares of preferred stock, of the par value of One Hundred Dollars ($100) each, held by the public; and

The Hart & Hegeman Manufacturing Company has capital stock outstanding as follows:

Twenty Thousand (20,000) shares of the common stock, of the par value of Twenty-five Dollars ($25) each, all of which is owned by The H. & H. Electric Company, a party to this agreement, and Thirteen Thousand Three Hundred and Thirty-three (13,333) shares of preferred stock, of the par value of One Hundred Dollars ($100) each, owned by the public; and

The Arrow Manufacturing Company has capital stock outstanding, as follows:

Two Hundred Thousand (200,000) shares of common stock of the par value of Five Dollars ($5) each, owned by the public; and

The H. & H. Electric Company has capital stock outstanding, as follows:

Two Hundred Thousand (200,000) shares common stock, of the par value of Five Dollars ($5) each, owned by the public, and

Whereas, the consolidated or merged corporation will, in lieu of the capital stock of the consolidating corporations outstanding as above stated, issued its capital stock as stated in the Sixth paragraph above,

622 *Exhibit I.*

Now, Therefore, the capital stock of the consolidated or merged corporation, consisting of Two Hundred Thousand (200,000) shares of common stock and Thirty-two Thousand, Two Hundred Eighty-three (32,283) shares of preferred stock, as provided in the preceding articles hereof, shall be issued in lieu of the capital stock of the four consolidating corporations, as follows:

Eighteen Thousand Nine Hundred and Fifty (18,950) shares of the preferred stock of the consolidated or merged corporation shall be issued in
623 lieu of the preferred capital stock of The Arrow-Electric Company.

Thirteen Thousand, Three Hundred and thirty-three (13,333) shares of the preferred capital stock of the consolidated or merged corporation shall be issued in lieu of the preferred capital stock of The Hart & Hegeman Manufacturing Company.

One Hundred Thousand (100,000) shares of the common capital stock of the consolidated or merged corporation shall be issued in lieu of the capital stock of The Arrow Manufacturing Company.

One Hundred Thousand (100,000) shares of the common capital stock of the consolidated or merged
624 corporation shall be issued in lieu of the capital stock of The H. & H. Electric Company.

No shares of the consolidated or merged corporation shall be issued in lieu of the common stock of The Arrow Electric Company, all of which is owned by The Arrow Manufacturing Company, a party to this agreement.

No shares of the consolidated or merged corporation shall be issued in lieu of the common stock of The Hart & Hegeman Manufacturing Company,

Exhibit I. 625

all of which is owned by The H. & H. Electric Company, a party to this agreement.

The manner of converting the shares of the capital stock of each of the consolidating corporations into shares of the capital stock of the consolidated or merged corporation shall be as follows:

When this agreement shall have been approved by the Secretary of State and the consolidation or merger shall have been effected, as herein provided, the respective holders of the preferred stock of The Arrow Electric Company will be entitled to receive one (1) share of the preferred stock of the consolidated or merged corporation for each one (1) share of preferred stock of The Arrow Electric Company held by them respectively upon consolidation; 626

And the respective holders of the preferred stock of The Hart & Hegeman Manufacturing Company will be entitled to receive one (1) share of the preferred stock of the consolidated or merged corporation for each one (1) share of the preferred stock of The Hart & Hegeman Manufacturing Company held by them respectively upon consolidation;

And the respective holders of the stock of The Arrow Manufacturing Company will be entitled to receive one-half (½) of one (1) share of the common stock of the consolidated or merged corporation for each one (1) share of the stock of The Arrow Manufacturing Company held by them respectively upon consolidation; 627

And the respective holders of the stock of The H. & H. Electric Company will be entitled to receive one-half (½) of one (1) share of the common stock of the consolidated or merged corporation for each one (1) share of the stock of The H.

628 *Exhibit I.*

& H. Electric Company held by them respectively upon consolidation.

Upon the approval and filing of this agreement the respective stockholders of the consolidating corporations shall become and be stockholders of the consolidated or merged corporation.

Certificates of stock of the consolidated or merged corporation in each instance will be issued only for full shares, but warrants will be issued for fractional shares, if any, remaining after the apportionment of full shares to each stockholder, or
629 remaining after combining several warrants into one or more full shares, which warrants will be transferable, and, when duly endorsed and combined so as to make one or more full shares, may be surrendered for certificates of stock of the consolidated or merged corporation for such number of shares as may be equal to the amount of such combined warrants. The holders of these warrants shall not be entitled to receive any dividends or interest thereon, or to vote thereon. The right to exchange these warrants for full shares of the consolidated or merged corporation shall expire at the end of sixty days from the date of the original issue
630 of such warrants, and after the expiration of said sixty days the shares of the stock of the consolidated or merged corporation remaining unissued because of the failure of the holders of such warrants to exercise such privilege of combination and conversion shall, after due notice, be sold by the directors to such persons and on such terms as they shall prescribe.

The consolidated or merged corporation may require each stockholder of each of the consolidating corporations to surrender his certificates of stock in

the consolidating corporations, and no stockholder, until such surrender of his certificates, shall be entitled to receive a certificate for shares of stock of the consolidated or merged corporation or to vote thereon, or to receive dividends declared thereon. 631

Ninth. The By-laws of The Arrow Electric Company, one of the consolidating corporations, shall be the by-laws of the consolidated or merged corporation until it shall, at a meeting duly called for the purpose, adopt a new set of by-laws.

Tenth. This agreement of consolidation or merger shall not be effective unless approved by two-thirds of all the outstanding stock of each class of each of the consolidating corporations and unless thereafter filed in the Office of the Secretary of State and approved by him, as required by law, and if so ratified and approved by the stockholders of each of the four consolidating corporations and so filed in the Office of the Secretary of State and approved by him, the agreement shall become effective at the close of business on the 31st day of December, 1928. 632

Eleventh. Until the Board of Directors of the consolidated or merged corporation shall order otherwise, the Hartford National Bank and Trust Company, of Hartford, Connecticut, shall be the transfer agent of the preferred stock of the consolidated or merged corporation, and the Phœnix State Bank and Trust Company, of Hartford, Connecticut, shall be the transfer agent of the common stock of the consolidated or merged corporation. 633

634 *Exhibit I.*

IN WITNESS WHEREOF, we have hereunto set our hands and attached the seals of the several corporations at Hartford, this 11th day of December, 1928.

EDWARD R. GRIER
DANIEL J. GLAZIER
BENJ. C. PERKINS
HARVEY C. POND
CHARLES A. TENEYCK
ARTHUR L. SHIPMAN
A Majority of the Directors of
(Seal) The Arrow Electric Company

635

SAMUEL P. WILLIAMS
GEO. H. BURT
ROBERT C. BUELL
CHARLES WELLES GROSS
J. R. COOK
A Majority of the Directors of
The Hart & Hegeman Manu-
(Seal) facturing Company

EDWARD R. GRIER
BENJ. C. PERKINS
HARVEY C. POND
636 A Majority of the Directors of
The Arrow Manufacturing
(Seal) Company

SAMUEL P. WILLIAMS
MONROE GUETT
J. R. COOK
A Majority of the Directors of
(Seal) The H. & H. Electric Company

Exhibit I.

637

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

HARTFORD, December 31, 1928.

I, E. Bosworth Grier, Assistant Secretary of The Arrow Electric Company, a corporation organized under the statute laws of the State of Connecticut hereby certify that the foregoing agreement was on the 31st day of December, 1928, submitted to the stockholders of said corporation at a meeting called for the purpose of considering the same, notice thereof having been given, and publication thereof 638
having been duly made, as required by law, and that two-thirds or more of all the outstanding stock of each class voted to approve such merger and consolidation.

E. BOSWORTH GRIER
Assistant Secretary of The Arrow
(Seal.) Electric Company

639

640 *Exhibit I.*

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

HARTFORD, December 31, 1928.

I, Robert C. Buell, Secretary of The Hart & Hegeman Manufacturing Company, a corporation organized under the statute laws of the State of Connecticut hereby certify that the foregoing agreement was on the 31st day of December, 1928, submitted to the stockholders of said corporation at a meeting called for the purpose of considering the
641 same, notice thereof having been given, and publication thereof having been duly made, as required by law, and that two-thirds or more of all the outstanding stock of each class voted to approve such merger and consolidation.

ROBERT C. BUELL
Secretary of The Hart & Hegeman
(Seal.) Manufacturing Company

642

Exhibit I.

643

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

HARTFORD, December 31, 1928.

I, Harvey C. Pond, Secretary of The Arrow Manufacturing Company, a corporation organized under the statute laws of the State of Connecticut hereby certify that the foregoing agreement was on the 31st day of December, 1928, submitted to the stockholders of said corporation at a meeting called for the purpose of considering the same, notice thereof having been given, and publication thereof having been duly made, as required by law, and that two-thirds or more of all the outstanding stock of each class voted to approve such merger and consolidation.

644

HARVEY C. POND
Secretary of The Arrow
Manufacturing Company

(Seal.)

645

646 *Exhibit I.*

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

HARTFORD, December 31, 1928.

I, John R. Cook, Secretary of The H. & H. Electric Company, a corporation organized under the statute laws of the State of Connecticut hereby certify that the foregoing agreement was on the 31st day of December, 1928, submitted to the stockholders of said corporation at a meeting called for the
647 purpose of considering the same, notice thereof having been given, and publication thereof having been duly made, as required by law, and that two-thirds or more of all the outstanding stock of each class voted to approve such merger and consolidation.

JOHN R. COOK
Secretary of The H. & H.
Electric Company

(Seal.)

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

648 Hartford, Ct. Dec. 31 1928.

Personally appeared E. Bosworth Grier, Assistant Secretary of The Arrow Electric Company, and made oath to the truth of the foregoing certificate by him signed, before me.

MAE J. LILLIE
Notary Public

Exhibit I. 649

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Hartford, Ct. Dec. 31 1928.

Personally appeared Robert C. Buell, Secretary of The Hart & Hegeman Manufacturing Company, and made oath to the truth of the foregoing certificate by him, signed before me.

MAE J. LILLIE
Notary Public

650

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Hartford, Ct. Dec. 31 1928.

Personally appeared Harvey C. Pond, Secretary of The Arrow Manufacturing Company, and made oath to the truth of the foregoing certificate by him signed, before me.

MAE J. LILLIE
Notary Public

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

651

Hartford, Ct. Dec. 31 1928.

Personally appeared John R. Cook, Secretary of The H. & H. Electric Company, and made oath to the truth of the foregoing certificate by him signed, before me.

L. G. STEVENSON
Notary Public

Approved Dec. 31, 1928
FRANCIS A. PALLOTTI, Secretary
By VICTOR DENEZZO.

652 **Exhibit J.**

Section 3520. SIMILAR CORPORATIONS MAY CONSOLIDATE. Any two or more corporations which are carrying on business of the same or similar nature may merge or consolidate into a single corporation.

Section 3521. DIRECTORS' AGREEMENT AS TO TERMS OF CONSOLIDATION. The directors of the several corporations proposing to merge or consolidate may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of such
653 proposed consolidation and stating the name of the consolidated corporation, the number, names and places of residence of its first directors, the number of shares of its capital stock and the classes thereof and the amount or par value of each share thereof, and the manner of converting the shares of capital stock of each of the old corporations into shares of the capital stock of the consolidated corporation, together with such other provisions as are required to be set forth in an original certificate of incorporation and any other provisions necessary to carry such proposed consolidation into effect.

654 Section 3522. STOCKHOLDERS TO VOTE UPON CONSOLIDATION. Such agreement shall be submitted to the stockholders of each of such merging or consolidating corporations, separately, at a meeting thereof to be called for the purpose of considering the same, and twenty days' notice of the time, place and object of such meeting shall be mailed to the last known post office address of each of such stockholders, and such notice shall be published once in each week for three successive weeks in one or more newspapers of this state having a circulation in

the towns in which such corporations are respectively located. At such stockholders' meetings, if two-thirds of all the outstanding stock of each class shall vote to approve such merger or consolidation, the facts shall be certified upon such agreement by the secretaries of the respective corporations under the seals thereof, and such agreement so adopted and certified shall be filed in the office of the secretary of the state, who shall, if the same conforms to the provisions of this chapter, indorse the same "Approved," with his name and official title; and a copy of such agreement, certificate and approval, 656
duly certified by the secretary of the state under his hand and the seal of the state, shall be *prima facie* evidence of the facts set forth in such agreement and certificate and of the legal existence and organization of such consolidated corporation, and that it is duly authorized to exercise all of its corporate powers.

Section 3523. RIGHTS, DUTIES, AND LIABILITIES OF CONSOLIDATED CORPORATIONS. Upon the completion of such consolidation, the several corporations shall become a corporation by the name provided in such agreement, and shall possess all of the rights, privileges, powers and franchises of each of 657
the consolidating corporations; and all property, real, personal and mixed, and all debts due to them on whatever account, shall be vested in the consolidated corporation; and all rights of creditors and all liens upon the property of either of such consolidating corporations shall be preserved unimpaired, and the respective corporations shall continue in existence so far as may be necessary to preserve the same; and all debts, liabilities and duties of either of such consolidating corporations

658 *Exhibit J.*

shall thenceforth attach to the consolidated corporation, and may be enforced against it to the same extent as if they had been incurred or contracted by it. An amount of the stock of the consolidated corporation equivalent to the amount of the stock of the merged corporations on which a franchise tax has been paid shall be exempt from taxation under Section 61 of this chapter.

Section 3254. REMEDY OF AGGRIEVED STOCKHOLDER. Any stockholder in any corporation consolidating as aforesaid who, at the time of such consolidation, objected thereto in writing, may, within ten days after the agreement of consolidation has been filed for record in the office of the secretary of the state, demand in writing from the consolidated corporation payment for his stock; and such corporation shall, within three months thereafter, pay him the value of his stock at the date of such consolidation. In case of disagreement as to the value thereof, such value shall be ascertained by three disinterested persons to be chosen, one by the stockholder, one by the directors of the consolidated corporation and the third by the two thus selected, and, in case their award is not paid within sixty days from its date, it shall become a debt of such consolidated corporation and may be collected as such. On receiving payment of the amount awarded, such stockholder shall transfer his stock to the consolidated corporation, which shall dispose of it on the best terms obtainable.

659

660

Exhibit K.

661

January 11, 1929

To the Honorable Federal Trade Commission
Otis B. Johnson, Esq., Secretary
Washington, D. C.

Dear Sirs:

In the matter of Arrow-Hart & Hegeman, Inc.
Docket No. 1498

In response to the complaint issued by your Commission against the above company, and because 662
our hearing before the Board of Review and a subsequent conference with Honorable Robert E. Healey, Chief Counsel of your Commission, impressed us with the fact that the Commission inclined to apply a different rule or standard by which to test the legality of such a holding company than that which we had used, but without acknowledging that during its corporate existence Arrow-Hart & Hegeman, Incorporated had violated any law, the company by our advice has ceased and desisted from the alleged violation and has gone out of business.

The steps taken to accomplish this result have 663
been as follows:

The directors of said company at their meeting held November 30, 1928 voted to recommend to its stockholders the transfer of all its property, viz, all its holdings of common stock of The Arrow Electric Company to The Arrow Manufacturing Company, a Connecticut corporation, and all its holdings of The Hart & Hegeman Manufacturing Company to The H & H Electric Company, a Connecticut corporation. Such recommendations were

664 *Exhibit K.*

approved at a special meeting of the stockholders of Arrow-Hart & Hegeman, Incorporated, held on December 6, 1928, and the transfers were made. On December 10, 1928 the stockholders of Arrow-Hart & Hegeman, Incorporated, voted to terminate its corporate existence and a certificate to that effect in accordance with the statutes of Connecticut in such case made and provided was filed in the office of the Secretary of State. The result is that the corporation thereafter had no assets and no liabilities. You will appreciate that the method
665 by which the dissolution of Arrow-Hart & Hegeman, Incorporated and the distribution of its assets was accomplished was adopted to meet the income tax situation.

Thereafter and through proper action of the directors of The Arrow Electric Company, The Arrow Manufacturing Company, The Hart & Hegeman Manufacturing Company and The H & H Electric Company, confirmed by action of the stockholders of all said companies in accordance with the statute in such case made and provided, said corporations merged and consolidated on December 31, 1928 into one corporation the name of which
666 is The Arrow-Hart & Hegeman Electric Company. A certified copy of the agreement of consolidation and merger between such companies is inclosed herewith.

Very truly yours,

ARTHUR L. SHIPMAN
CHARLES WELLES GROSS
Counsel.

Substitute Order Appointing Examiner and Fixing Time and Place for Taking Testimony. 667

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 28th day of April, A. D., 1931.

Commissioners—C. W. HUNT, *Chairman*, 668
WILLIAM E. HUMPHREY,
CHARLES H. MARCH,
EDGAR A. MCCULLOCH,
GARLAND S. FERGUSON, JR.

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED and THE ARROW-HART & HEGEMAN ELECTRIC COMPANY.	Docket No. 1498.

669

WHEREAS, on January 28, 1929, George McCorkle, an examiner of this Commission, was designated and appointed to take testimony and receive evidence in this proceeding, and whereas the said George McCorkle, by reason of assignment to other duties, will be unable to continue herein,

IT IS ORDERED that William C. Reeves, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other

670 *Substitute Order Appointing Examiner and Fixing Time and Place for Taking Testimony.*

duties authorized by law in the place and stead of the aforesaid George McCorkle.

IT IS FURTHER ORDERED that the taking of testimony in this proceeding begin on Monday, May 25, 1931, at 10:00 o'clock in the forenoon of that day, Eastern Standard Time, at the South Room, Second Floor, Old State House Building, Hartford, Connecticut.

671 Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondents. The examiner will then close the case and make his report.

By the Commission.

OTIS B. JOHNSON,
Secretary.

(Seal)

672

Motion to Dismiss. 673

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER of ARROW HART & HEGEMAN, INC. and THE ARROW-HART & HEGEMAN ELECTRIC COMPANY.	Docket No. 1498.

The Arrow-Hart & Hegeman Electric Company, 674
cited into this proceeding by notice dated June 29, 1929 and hereinafter called the "new respondent", appearing specially for the purpose of filing this Motion, hereby moves that the complaint brought under date of March 3, 1928 against the corporation known during its existence as Arrow-Hart & Hegeman, Incorporated, hereinafter called the "old respondent", and the supplemental complaint brought under date of June 29, 1929, naming both the old respondent and the new respondent, be dismissed upon each of the following grounds:

1. The old respondent fully met the criticism of 675
the Federal Trade Commission as contained in the original complaint of March 3, 1928 in that it wholly ceased and desisted from controlling, through stock ownership or otherwise, the subsidiary corporations referred to in said original complaint long prior to the filing of the supplemental complaint.

2. Said old respondent did not use the stock of said subsidiary corporations by voting or by the granting of proxies or otherwise to bring about the

merger or consolidation of said subsidiary corporations (together with The Arrow Manufacturing Company and The H. & H. Electrical Company) into the new respondent.

3. Said old respondent on December 6, 1928 distributed all of its assets and on December 10, 1928 voted to terminate its corporate existence. Its preliminary certificate of dissolution was filed in the office of the Secretary of the State of Connecticut on December 10, 1928, at which time said certificate was approved by the Secretary of the State of Con-
677 necticut. Under date of January 11, 1929 counsel notified the Federal Trade Commission, without acknowledging that during its corporate existence the old respondent had violated any law, that the company had ceased and desisted from the alleged violation and had gone out of business and had voted to terminate its corporate existence, see Answer Exhibit K. On April 11, 1929 the final certificate of dissolution of the old respondent was filed in the office of the Secretary of State and approved by him, see Answer Exhibit D. Thereby the corporate existence of the old respondent was terminated.

678 4. From and after December 6, 1928, on which date the old respondent divested itself of all its assets, viz. shares of the common stock of The Hart & Hegeman Manufacturing Company and of The Arrow Electric Company, said two companies became and were independent corporations having separate and independent officers, directors and stockholders, with no restraint on competition between them. Said two companies were as independent and free from outside restraint and control as they were prior to the incorporation of the old respondent.

679

5. The new respondent, cited into this case on supplemental complaint dated June 29, 1929, was not in any way in law or in fact the legal successor of the old respondent and was incorporated and organized under the laws of the State of Connecticut on December 31, 1928 as a consolidation or merger of four companies, The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H. & H. Electric Company, and was in full business operation more than five months prior to the filing of said supplemental complaint. For copy of the agreement of consolidation or merger, resulting in the formation of the new respondent, with the approval of the State of Connecticut thereon, dated December 31, 1928 see Answer Exhibit D.

680

6. Said new respondent has never in any way violated any of the provisions of the Clayton Act, so-called.

WHEREFORE, the undersigned respectfully moves to dismiss both the original and the supplemental complaint as to the old respondent, and to dismiss the supplemental complaint as to the new respondent, for the foregoing reasons.

681

Dated at Hartford, this 11th day of October, 1929.

THE ARROW-HART & HEGEMAN
ELECTRIC COMPANY
By EDWARD R. GRIER
President
103 Hawthorne Street,
Hartford, Connecticut.

ARTHUR L. SHIPMAN,
CHARLES WELLES GROSS,
WALLACE W. BROWN,
Its Attorneys.

682 **Order Overruling Motion to Dismiss.**

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 31st day of October, A. D., 1929.

Commissioners—EDGAR A. MCCULLOCH, *Chairman*,
GARLAND S. FERGUSON, JR.,
C. W. HUNT,
WILLIAM E. HUMPHREY,
CHARLES H. MARCH.

683

IN THE MATTER of ARROW-HART & HEGEMAN, INC. *et al.*	Docket No. 1498.

This matter coming before the Commission upon respondents' motion to dismiss and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED, That respondents' motion to dismiss be, and the same is hereby denied but
684 without prejudice to the renewal thereof at the final hearing of this proceeding before the Commission.

IT IS FURTHER ORDERED, That a copy hereof be served upon counsel for respondent corporations.

By order of the Commission.

OTIS B. JOHNSON,
Secretary.

(Seal)

Order Overruling Motion to Dismiss. 685

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 15th day of December, 1930.

Commissioners—GARLAND S. FERGUSON, JR., *Chairman*,
C. W. HUNT,
WILLIAM E. HUMPHREY, 686
CHARLES H. MARCH,
EDGAR A. MCCULLOCH.

IN THE MATTER of ARROW-HART & HEGEMAN, INC. *et al.*	Docket 1498.

This matter coming on to be heard upon motion of respondents to dismiss and the Commission being 687
further informed by memoranda submitted by the Chief Counsel and being fully advised in the premises.

IT IS HEREBY ORDERED that the said motion to dismiss be and the same hereby is overruled without prejudice to the raising of the questions involved by respondents at the final hearing of this proceeding.

By the Commission,

OTIS B. JOHNSON,
Secretary.

688 **Findings as to the Facts and Conclusion.**

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 6th day of July, A. D., 1932.

Commissioners—WILLIAM E. HUMPHREY, *Chairman*,

689 CHARLES H. MARCH,
EDGAR A. MCCULLOCH,
GARLAND S. FERGUSON, JR.,
C. W. HUNT.

IN THE MATTER of ARROW-HART & HEGEMAN, INC. and THE ARROW-HART & HEGEMAN ELECTRIC COMPANY.	Docket 1498.

690 Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled, "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes", (the Clayton Act), the Federal Trade Commission issued and served its original complaint upon Arrow-Hart & Hegeman, Inc., and issued its supplemental complaint against the said Arrow-Hart & Hegeman, Inc., and The Arrow-Hart & Hegeman Electric Company, respondents herein, charging them with violating Section 7 of said Act.

691

The said respondent, Arrow-Hart & Hegeman, Inc., entered its appearance and filed its answer to the said original complaint and the said respondent, The Arrow-Hart & Hegeman Electric Company, entered its appearance and filed its answer to the said supplemental complaint, hearings were had before an Examiner of the Commission theretofore duly appointed: testimony and evidence was offered and received in support of the charges of the said complaints, and testimony and evidence was offered and received in defense of the matters charged in the said complaints, all of which said testimony was reduced to writing and filed in the office of the Commission; and thereafter, the proceeding came on for final hearing on the record, briefs and oral arguments of counsel; and the Commission being fully advised in the premises, now makes this its report and states its findings as to the facts and its conclusion drawn therefrom, as follows:

692

Findings As To the Facts.

Paragraph One: Respondent Arrow-Hart & Hegeman, Inc., hereinafter referred to as the original respondent, was organized on or about October 6, 1927, under the laws of the State of Connecticut, with an authorized capital stock of two million dollars ($2,000,000), consisting of 200,000 shares of common stock having a par value of ten dollars ($10) per share, and with its principal business office in the City of Hartford and State of Connecticut.

693

On or about October 10, 1927, said original respondent acquired all of the outstanding common or voting stocks of the Hart & Hegeman Manufacturing Company, a Connecticut corporation, and

694 *Findings as to the Facts and Conclusion.*

of the Arrow Electric Company, also a Connecticut corporation, and continued to hold said common or voting stocks until on or about December 6, 1928, on or about which date said common or voting stocks were transferred to holding companies organized by said original respondent as hereinafter set forth in Paragraph Five hereof.

PARAGRAPH TWO: The said Hart & Hegeman Manufacturing Company was, at the time its common stock was acquired by the said original re-
695 spondent, as set forth in Paragraph One hereof, a corporation under the laws of the State of Connecticut, with its principal place of business located in the City of Hartford, in said State. Since its organization in 1891, the said Hart & Hegeman Manufacturing Company had been engaged in the manufacture and sale of electrical wiring devices, including particularly electric snap switches and wall plates. In 1914 it began to sell as exclusive selling agent, the Paiste line of electrical wiring devices consisting of sockets, receptacles and porcelain cut-outs, attachments plugs and other similar devices, manufactured by H. T. Paiste Company,
696 a Pennsylvania corporation located at Philadelphia, in said State. Between 1914 and 1927 the said Hart & Hageman Manufacturing Company acquired all the outstanding common stock of the said H. T. Paiste Company and in October, 1927, operated the latter mentioned company as a subsidiary corporation in the manufacture of a part of its line of electrical wiring devices.

In 1926 the said Hart & Hegeman Manufacturing Company acquired, and in October, 1927 owned, all the capital stock of the Electric Porcelain and Manufacturing Company of Trenton, New Jersey,

which for a number of years prior thereto had been engaged in the manufacture of porcelain parts which it furnished to the said Hart & Hegeman Manufacturing Company or its subsidiary, the said H. T. Paiste Company, for use as raw material in the manufacture of electrical wiring devices.

In October, 1927, the said Hart & Hegeman Manufacturing Company was engaged in the sale and distribution of a full line of electrical wiring devices which it sold to electrical jobbers and other customers located in the various States of the United States, causing said products, when sold 698
to be transported from the state of manufacture to the purchasers thereof located in other states.

About the year 1909, one Shiras Morris acquired more than a majority of the common stock of the said Hart & Hegeman Manufacturing Company, became its President and Treasurer, and continued as such until his death on February 2, 1927, when he was succeeded as President and Treasurer by one Samuel P. Williams, who had been associated with the said Hart & Hegeman Manufacturing Company since 1918, in various capacities, including sales manager, secretary and assistant treasurer. At the time of the death of Mr. Shiras Morris, the 699
outstanding capitalization of the said Hart & Hegeman Manufacturing Company was $200,000 in common stock and $300,000 in preferred stock.

Although said Mr. Shiras Morris, during his lifetime had contemplated a merger between the said Hart & Hegeman Manufacturing Company and the said Arrow Electric Company, negotiations were not entered into until after his death, in June, 1927, discussions were had between the said Samuel P. Williams, representing the said Hart & Hegeman Manufacturing Company, and one Edward R. Grier,

700 *Findings as to the Facts and Conclusion.*

President of the said Arrow Electric Company, and on August 6, 1927, an agreement was entered into between the stockholders of the said Hart & Hegeman Manufacturing Company and the stockholders of the said Arrow Electric Company which provided for the readjustment of the capital structure of the two corporations involved as a preliminary step to the organization of the said original respondent. Pursuant to this agreement, the said Hart & Hegeman Manufacturing Company, prior to October 6, 1927, increased its outstanding common stock
701 from $200,000 to $500,000, and the preferred stock was increased from $300,000 to $1,333,000, the par value of the common stock being $25 per share and the preferred stock $100 per share. The estimated value of the assets of the said Hart & Hegeman Manufacturing Company on or about October 6, 1927, was $3,500,000. The holders of the new preferred stock of the said Hart & Hegeman Manufacturing Company had no voting power except in the event the preferred dividends were not paid for six successive quarters, in which event and so long as any default should continue, the holders of preferred shares issued and outstanding were intitled
702 to elect a majority of the Board of Directors. There is no evidence in the record that the said preferred dividends were not paid or that the said preferred stockholders ever were entitled to elect a majority of the said Board of Directors.

On October 10, 1927, the said original respondent acquired all of the outstanding common or voting stock of the Hart & Hegeman Manufacturing Company (20,000 shares), by exchanging for the same 80,000 shares of the capital stock of the said original respondent.

PARAGRAPH THREE: The said Arrow Electric Company was organized under the laws of the State of Connecticut with its principal place of business located at Hartford, in said State, and at the time its common stock was acquired by the said original respondent, in October, 1927, as set forth in Paragraph One herein, owned, and operated a plant at Hartford where it manufactured a general line of electrical wiring devices, including sockets, receptacles, attachment plugs, heater plugs, switches, wall plates, rosette shade holders and small accessories, and also owned all the common stock of the 704
Washington Porcelain Company, a New Jersey corporation located at Washington, New Jersey, and engaged in the manufacture of porcelain parts for electrical wiring devices which it for a number of years had sold to the Arrow Electric Company. It sold said products to electrical jobbers and other customers located in the various States of the United States, causing said products, when sold, to be transported from the state of manufacture to the purchasers thereof located in other states.

At the time the original respondent acquired the common stock of the said Arrow Electric Company in October, 1927, the latter mentioned company was 705
capitalized at $750,000 common stock, par value $25 per share, and $2,000,000 preferred stock at $100 per share, the preferred stock having been issued during 1927. The holders of preferred stock had no voting power except in the event the preferred dividends were not paid for six successive quarters, in which event and so long as any default should continue, the holders of preferred shares issued and outstanding were entitled to elect a majority of the Board of Directors. There is no evidence in the record that the said preferred divi-

706 *Findings as to the Facts and Conclusion.*

dends were not paid or that the said preferred stockholders ever were entitled to elect a majority of the said Board of Directors.

Said original respondent, on October 10, 1927, acquired all of the outstanding common or voting stock of the said Arrow Electric Company (30,000 shares), by exchanging 120,000 shares of the common stock of the said original respondent for the said 30,000 shares of common stock of the said Arrow Electric Company.

707 PARAGRAPH FOUR: At the time the said original respondent acquired the capital stocks of the said Arrow Electric Company and the said Hart & Hegeman Manufacturing Company, these said companies were in direct and substantial competition with each other in the manufacture, sale and distribution in interstate commerce of a full line of electrical wiring devices usually described in the trade as "shelf goods", the same being wiring devices ordinarily stocked and distributed by electrical supply distributors or jobbers. Generally speaking, this material is of a standard type, packed in suitable units for resale, and described in cata-
708 logues under various schedule numbers. For instance, both companies listed in the catalogues which they distributed to the trade under schedule "B", all electrical sockets and socket bases and receptacles of all kinds which are threaded for the reception of a lamp. Under schedule "S" they both listed all the "quick" make-and-break switches. Under schedule "H" they listed all plates and miscellaneous flush receptacles, signal devices, warning lights, radio receptacles, shade holders, knife switches and rosettes. Under schedule "P" they listed such standard items as convenient outlets,

attachment plugs and caps, service bases, cord connecters, etc., and under schedule "Y" they listed miscellaneous devices not included in the other schedules.

During and prior to the year 1926 and that portion of 1927 prior to October, both the Arrow Electric Company and the Hart & Hegeman Manufacturing Company sold their said products to the same class of trade, that is, electrical and hardware jobbers and large users, such as manufacturing plants, throughout the United States and in foreign countries, both companies maintaining branches, 710
sales offices, or commission men, located for convenience in making distribution, as follows: Boston, Massachusetts, for the New England territory, including the New England States; New York City, New York, for the New York territory, including the States of New York, New Jersey, Pennsylvania, Delaware and the Northern part of West Virginia; Baltimore, Maryland, for the territory including Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Florida; Chicago, Illinois, including the territory from the Rocky and Sierra Nevada Mountains on the West, to the territory already described on the East; San 711
Francisco, California, for the Pacific Coast territory, including the States of Washington, Oregon and California. Both companies traveled salesmen from these branch offices who acted chiefly as "missionary men", calling upon the consumers or users of electrical wiring devices, seeking to interest them in the respective Arrow and Hart & Hegeman products. A comparison of the sales of the two companies for the year 1926 through the branch offices named, is set forth below:

712 *Findings as to the Facts and Conclusion.*

Cities	*Arrow Electric Co.*	*Hart & Hegeman Mfg. Co.*
Boston	$ 483,933	$ 315,911
New York	1,107,680	1,010,373
Baltimore	240,517	144,163
Chicago	1,524,220	1,368,941
San Francisco	462,989	169,254

The approximate total of domestic sales for the year 1926, for the Arrow Electric Company, was $3,825,000 and for the Hart & Hegeman Manufacturing Company, $3,145,000. The approximate
713 total sales of the two companies for that year, including export and miscellaneous business, were: Arrow Electric Co. $4,000,000 Hart & Hegeman Manufacturing Company, $4,150,000.

At the time the said original respondent acquired the capital stocks of the said Hart & Hegeman Manufacturing Company and the said Arrow Electric Company, at least fifty-nine per cent (59%) of the volume of the sales of the said Hart & Hegeman Manufacturing Company consisted of electrical wiring devices generally known in the trade as "shelf goods" hereinbefore described, of similar
714 quality which were sold in direct and active competition, with the entire output of the said Arrow Electric Company to the same class of trade in the same territory at approximately the same prices and were used for the same purposes by the ultimate purchasers thereof; the remaining forty-one per cent (41%) of the sales of the said Hart & Hegeman Manufacturing Company consisted principally of electrical switches and other devices manufactured to the order of customers for use in appliances requiring such devices, such as vacuum cleaners, radios, electric irons, et cetera,

715

a market where the said Arrow Electric Company did not actively compete with the said Hart & Hegeman Manufacturing Company except on a limited number of items such as heater switches. Approximately twenty-five to thirty per cent (25-30%) of the customers of the said Hart & Hegeman Manufacturing Company and the said Arrow Electric Company, at that time, and for a number of years prior thereto, were joint or common customers, sales of similar items bearing their respective trade marks being made to such customers by both companies.

716

PARAGRAPH FIVE: The Federal Trade Commission, on March 3, 1928, issued its original complaint in this proceeding against Arrow-Hart & Hegeman, Inc., hereinbefore described as the original respondent, charging said original respondent with violation of Section 7 of the Clayton Act in the acquisition of the capital stock of the said Arrow Electric Company and the Hart & Hegeman Manufacturing Company. On September 7, 1928, said original respondent filed its answer to the charges of the Commission's complaint. On November 10, 1928, the directors of the original respondent voted to recommend to the stockholders that the said original respondent be dissolved and its assets, consisting of shares of common stock of the said Arrow Electric Company and of the Hart & Hegeman Manufacturing Company, be distributed to its stockholders; and on the same day issued a notice to the stockholders of the original respondent, reading in part as follows:

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"The dissolution of Arrow-Hart & Hegeman, Inc., and the distribution of its assets among

its stockholders have been recommended by counsel to meet the recent criticism of the Federal Trade Commission of the organization of our company and its control of the two companies, The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, through stock ownership.

"The directors of Arrow-Hart & Hegeman, Inc. have, therefore, voted to recommend its dissolution and the distribution of its assets among its stockholders in kind. Enclosed is

719 formal notice of meeting of stockholders to confirm such action. The entire assets of the corporation are shares of the common stock of the Arrow Electric Company and of The Hart & Hegeman Manufacturing Company. It is expected that distribution will be made of these shares in kind so that each stockholder shall receive shares of the common stock of either one or both of said companies.

"Enclosed we hand you proxy and consent which concerns the dissolution of Arrow-Hart & Hegeman, Inc. and the distribution of its assets among you as stockholders.

720 * * * * * * *

"As a three-fourths vote of the stock of this company is required to carry out this plan, please sign and return this consent and proxy to the Phoenix State Bank & Trust Company, Trust Department, Hartford Connecticut, as soon as possible, for which a reply envelope is enclosed.

"We believe that upon distribution of this company's assets the directors of The Arrow Electric Company and of The Hart & Hegeman

Manufacturing Company will propose to the stockholders of each company an agreement of consolidation of these two companies. Further details will be sent you upon the conclusion of the liquidation of Arrow-Hart & Hegeman, Inc. for your approval.

"Much progress has been made in efficiency and economy through the organization of your company and more, we are confident, can be accomplished by actual merger and consolidation of the two companies, viz: The Arrow Electric Company and The Hart & Hegeman 722 Manufacturing Company."

On or about November 30, 1928, the Board of Directors of the said original respondent were advised by counsel that a distribution of its assets to the stockholders of the said original respondent might involve them in a claim by the United States Treasury Department of a profit taxable to them, and, upon advice of counsel, the original plan of dissolution as voted on November 10, 1928, by the said Board of Directors was amended. On or about November 30, 1928, at a special meeting, the Board of Directors of the said original respondent recommended to the stockholders of the said original respondent a general plan under which the said original respondent would transfer all its shares of the common stock of the said Hart & Hegeman Manufacturing Company to a new corporation, organized under the laws of the State of Connecticut, known as the H. & H. Electric Company, and said original respondent would transfer all its shares of the common stock of the said Arrow Electric Company to a new corporation organized under the laws of the State of Connecticut, to be known 723

724 *Findings as to the Facts and Conclusion.*

as The Arrow Manufacturing Company, in exchange for the issue by each of these new companies of all their shares of common stock to the stockholders of the original respondent, with the further recommendation that after such steps had been taken the said original respondent would be dissolved and the four remaining corporations named would merge under the laws of the State of Connecticut.

On November 30, 1928, pursuant to said plan, the said original respondent caused said The H. & H. Electric Company and The Arrow Manufacturing Company to be organized under the laws of the State of Connecticut.

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Notice was given to the stockholders of the said original respondent on December 1, 1928, containing the said recommendation of the said Board of Directors and calling for a special meeting of the stockholders of said original respondent for December 6, 1928. Said letter was as follows:

"ARROW-HART & HEGEMAN, INCORPORATED.
Hartford, December 1, 1928.

To the Stockholders of Arrow-Hart & Hegeman, Incorporated:

726

OUTLINE OF PLAN OF REORGANIZATION

Supplementing our circular letter to you, dated November 10, 1928, we now outline to you more fully the steps in the plan of reorganization involving this company, The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, indicating, subject to change, the various steps which shall be taken to consummate such plan of reorganization.

It is proposed that

(a) By vote of its stockholders Arrow-Hart & Hegeman, Incorporated, will transfer to a new Arrow Company all the shares of the common stock of The Arrow Electric Company in exchange for all the shares of the New Arrow Company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. Likewise, Arrow-Hart & Hegeman, Incorporated will transfer to a new Hart & Hegeman company all the shares 728 of the common stock of the Hart & Hegeman Manufacturing Company in exchange for all the shares of the new Hart & Hegeman company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. When this stock of the new companies has been issued, the entire value of your present holdings will be represented by the new stock. There will, therefore, be no necessity for you to surrender the certificates of stock which you now hold in Arrow-Hart & Hegeman, Incorporated. 729

To authorize this first step in the plan of reorganization a special stockholders' meeting of Arrow-Hart & Hegeman, Incorporated will be held on December 6, 1928, of which a formal notice is enclosed herewith, with a form of proxy running to the same six gentlemen who are your proxies for the meeting called for December 10th, which you will kindly execute and return promptly in the enclosed envelope.

730 *Findings as to the Facts and Conclusion.*

(b) That when such exchange of shares in conformity to the plan or reorganization, made necessary to meet the criticism of the Federal Trade Commission, as indicated in our former letter and notice, has been consummated there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at a meeting called for December 10, 1928, or at an adjournment thereof, it is anticipated that that corporation will be dissolved.

731 (c) That immediately thereafter a merger or consolidation of the four corporations then in existence, namely, The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow company and the new Hart & Hegeman company, will be submitted to the stockholders for approval. It is hoped that if adopted this merger or consolidation will be effective at the close of business on December 31, 1928.

These separate steps, as a part of one plan of reorganization, in the opinion of counsel, are desirable not only to meet the criticism of the
732 Federal Trade Commission but also to bring the reorganization unquestionably within the provisions of the Revenue Act of 1928 in such a way that the exchange of shares will involve no tax to any stockholder. Your officers and counsel have conferred upon this point with Colonel Robert H. Montgomery, of New York, the well known authority on income tax law and procedure, and it is his opinion that this plan of reorganization under the provisions of the Revenue Act involves no taxable gain to the stockholders.

733

As above stated, it is essential that we have your prompt cooperation to effect these corporate steps. A two-thirds vote of all the stock is necessary for the meeting called for December 6th. A form of proxy is enclosed, which will authorize the gentlemen named therein to act for you in support of such a plan of reorganization above outlined and as the same may be modified with their approval. The proxy will also authorize those gentlemen to receive on your behalf the stock in the new Arrow company and in the new Hart & Hegeman company and to surrender that stock on your behalf in exchange for shares of the merged or consolidated corporation which it is expected will be organized before the close of the year. The proxy also gives them the right to execute any instruments and do any acts, sign any waivers, or take any other steps which may be necessary or advisable in their opinion to accomplish such reorganization in the best and most expeditious manner.

734

At a meeting of your directors, held November 30, 1928, it was voted to close the stock transfer books of this company from November 30, 1928, until after the adjournment of the meeting called for December 10, 1928.

735

Yours very truly,

EDWARD R. GRIER,
President.

SAMUEL P. WILLIAMS,
Vice-President."

On December 6, 1928, at a special meeting, the stockholders of the said original respondent adopted

the general plan described in the foregoing letter as recommended by the Board of Directors, and authorized the transfer of all the shares of stock held by it in the said Arrow Electric Company to said The Arrow Manufacturing Company, and authorized the transfer of all the shares of stock held by it in the said Hart & Hegeman Manufacturing Company to said The H. & H. Electric Company, and also authorized the new corporation which should result from the proposed merger to take the name of "The Arrow-Hart & Hegeman Electric
737 Company", or some similar name, said corporate action being taken as the result of a voting of proxies which had been signed by the stockholders of the said original respondent. Said The Arrow-Hart & Hegeman Electric Company is hereinafter referred to as the new respondent.

On December 6, 1928, said original respondent, Arrow-Hart & Hegeman, Inc., transferred to the new holding company, said The Arrow Manufacturing Company, all the shares of the common stock of the said Arrow Electric Company, consisting of 30,000 shares common stock, of the par value of $25 per share, in exchange for all the shares of stock
738 of said The Arrow Manufacturing Company, consisting of 200,000 shares of the par value of $5 per share, and the said original respondent, on the same date, transferred to the new holding company, said The H. & H. Electric Company, all the shares of the common stock of the said Hart & Hegeman Manufacturing Company, consisting of 20,000 shares of the par value of $25 per share, in exchange for all the capital stock of said The H. & H. Electric Company, consisting of 200,000 shares of the par value of $5 per share, and on the same date said The Arrow Manufacturing Company and said The H. &

739

H. Electric Company issued all of their respective capital stocks to the stockholders of the said original respondent.

On December 10, 1928, at a special meeting, the stockholders of the said original respondent voted to confirm the action of the directors to terminate the corporate existence of the said original respondent, and, thereupon, a majority of the directors of the said original respondent signed a preliminary certificate of dissolution of the said original respondent, dated December 10, 1928, and filed said certificate in the office of the Secretary of State of 740
the State of Connecticut on said date, and caused notice of such dissolution to be advertised as required by law.

On April 11, 1929, a majority of the directors of the said original respondent executed and filed in the office of the Secretary of State of the State of Connecticut, a certificate showing that they had completed their duties as trustees in liquidation, and said certificate was examined and approved by the said Secretary of State on said date.

On December 31, 1928, the general plan approved by the stockholders of the said original respondent on December 6, 1928, was carried out, and at suc- 741
cessive hours the stockholders of the two original operating companies, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, and the stockholders of the two new holding companies, The H. & H. Electric Company and The Arrow Manufacturing Company, who were actually the stockholders of the original respondent, acted favorably upon the merger and consolidation agreement under the laws of the State of Connecticut, which had been approved by the stockholders of the said original respondent on December 6, 1928. On

742 *Findings as to the Facts and Conclusion.*

December 31, 1928, immediately effective, the Secretary of State of the State of Connecticut approved the merger and consolidation of the four corporations and there came into being the said new respondent, The Arrow Hart & Hegeman Electric Company.

The authorized capital stock of the said new respondent was $5,228,300, divided into 200,000 shares common stock of the par value of $10 each and 32,283 shares of preferred stock of the par value of $100 each; and pursuant to the said consolidation
743 agreement, said new respondent, on the date of its organization, issued 18,950 shares of its preferred stock in lieu of the preferred capital stock of the said Arrow Electric Company (18,950 shares); 13,333 shares of its preferred capital stock in lieu of the preferred capital stock of the said Hart & Hegeman Manufacturing Company (13,333 shares); 100,000 shares of its common capital stock in lieu of the capital stock of said The Arrow Manufacturing Company (the new company organized by the Board of Directors of said original respondent on November 30, 1928 to hold the capital stock of the Arrow Electric Company), and 100,000 shares of
744 its common capital stock of the H. & H. Electric Company (the new company organized by the Board of Directors of said original respondent on November 30, 1928, to hold the capital stock of the said Hart & Hegeman Manufacturing Company).

As the said consolidation agreement was actually carried out by the parties thereto, the common stock holders of the original respondent never obtained possession of the shares of common stock of said The Arrow Manufacturing Company and The H. & H. Electric Company, the two corporations organized by the Board of Directors of the original re-

spondent to hold the stock of the said Arrow Electric Company and Hart & Hegeman Manufacturing Company; but the stockholders of the said original respondent were required to and did submit their certificates of common stock to the Phoenix State Bank & Trust Company, Hartford, Connecticut, transfer agent, which said certificates were stamped as follows:

"THIS CERTIFIES

That the holder hereof has assented to the Plan of Reorganization adopted by the stockholders; and that under such Plan Arrow-Hart & Hegeman, Incorporated, has distributed all its assets and voted to terminate its corporate existence, and there has been issued to the holder hereof a certificate for the same number of shares of The Arrow-Hart & Hegeman Electric Company, in full settlement of all his rights under such Plan. 746

ARROW-HART & HEGEMAN, INCORPORATED,
S. P. WILLIAMS, *Treasurer*"

and the holders of such certificates received certificates for a like number of shares in the new respondent. 747

As a result of the merger of the operating companies, said Arrow Electric Company and Hart & Hegeman Manufacturing Company, and of the said two new holding companies, said The H. & H. Electric Company and The Arrow Manufacturing Company, the new respondent became the owner of all the assets of the merging corporations, and particularly the assets of said The H. & H. Electric Company and The Arrow Manufacturing Company,

748 *Findings as to the Facts and Conclusion.*

which consisted of the capital stock of the two said operating companies, the said Arrow Electric Company and Hart & Hegeman Manufacturing Company.

On December 31, 1928, the holders of the common stock of the new respondent were identically the same as the holders of the common stock of the said original respondent on November 30, 1928.

On January 1, 1929, the first meeting of the Board of Directors of the new respondent, The Arrow-Hart & Hegeman Electric Company, was
749 held. The said directors were the directors of the said original respondent before the merger, and were named in the said consolidation agreement as the directors of the new respondent upon its organization. The said meeting was called by Messrs. Edward R. Grier and Samuel P. Williams, President and Vice-President, respectively, of the said original respondent. At this first meeting of the Board of Directors, of the new respondent, Edward R. Grier and Samuel P. Williams were elected President and Vice President, respectively, of the new respondent, and certain other business was transacted, including the declaration of a dividend
750 paid out of the earnings of the said two operating companies, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, while subsidiaries of the said original respondent, and payable on or after January 15, 1929, to stockholders of the said new respondent when and as they converted their shares of stock of the consolidating corporations into common stock of the said new corporation and evidenced their consent to the plan under which said consolidation had been effected.

The first meeting of the stockholders of the said new respondent was held on January 28, 1929, it having been called by the newly chosen President, the said Edward R. Grier. At this meeting a set of by-laws was adopted and a financial report showing the condition of the new respondent as of January 1, 1929, was read and later submitted to the stockholders of the said new corporation. This report, which served as the basis for the future operations of the new respondent, contained a statement of the combined profit and loss and surplus accounts of the said Arrow Electric Company and the said Hart 752
& Hegeman Manufacturing Company for the year 1928, and disclosed a net income for the year of $1,253,252.85, which was reduced as of January 1, 1929, by increase in outstanding common stock arising from recapitalization prior to the formation of the new respondent, to $2,710,625.28.

The Federal Trade Commission, on June 29, 1929, issued its supplemental complaint including the new respondent as a joint respondent, and alleging that since the issuance of the original complaint the said original respondent had formed the said new respondent by the consolidation of the two formerly competing corporations with two holding 753
companies which it had organized, and all of the stocks, franchises, property and assets of the former competing companies had been transferred to the said new respondent.

The said new respondent, in its answer to the Commission's supplemental complaint, filed October 14, 1928, denied the allegations in so far as they alleged that the original respondent organized the new respondent, affirmatively alleging in defense that the said original respondent was not in any way a party to the merger and consolidation resulting in the said new respondent.

754 *Findings as to the Facts and Conclusion.*

PARAGRAPH SIX: At a special meeting of the Board of Directors of the said original respondent held on January 5, 1928, Messrs. Edward R. Grier and Samuel P. Williams, President and Vice-President, respectively, were authorized to vote all of the shares of stock of the two operating companies, namely, Hart & Hegeman Manufacturing Company and Arrow Electric Company, respectively, for a period of five years. During the year 1928 there was an interchange of employees between the said two operating companies, and certain statistical production and engineering experts of one organization
755 performed services for the other organization without additional compensation. Also, the Arrow Electric Company purchased some of the assets of the H. T. Paiste Company from the Hart & Hegeman Manufacturing Company and took over the business of manufacturing porcelain parts for the said Hart & Hegeman Manufacturing Company, which said business was discontinued by the said H. T. Paiste Company. Also, the said Hart & Hegeman Manufacturing Company manufactured plates for the said Arrow Electric Company, and the said Arrow Electric Company manufactured certain screws and parts for the said Hart & Hegeman
756 Manufacturing Company. The plant of the Electric Porcelain Manufacturing Company, which corporation was owned by said Hart & Hegeman Manufacturing Company, was closed and its machinery and equipment were transferred to the Washington Porcelain Company, a subsidiary of the said Arrow Electric Company.

At the beginning of the year 1929 the said new respondent continued the business of the manufacture and sale of electrical wiring devices which had been theretofore conducted by the said operating companies, Hart & Hegeman Manufacturing Com-

pany and Arrow Electric Company, operating the manufacturing plants of both companies as one unit, but maintaining separate sales divisions, through which it distributed its two recognized brands of electrical wiring devices, namely, "Arrow" and "H. & H."; thereafter the Arrow brand was sold under the "Arrow Electric Division" of the Arrow-Hart & Hegeman Electric Company, and the "H. & H." brand was sold under the "Hart & Hegeman Division" of The Arrow-Hart & Hegeman Electric Company.

The said Edward R. Grier, President of the said new respondent, was placed in full charge of all its operations, directing its various business policies, including the establishment of prices, terms and discounts, etc. In the year 1930, under his direction and leadership, the following changes were made in the sales organization of the said new respondent: 758

Mr. Harvey C. Pond, former sales manager of the Arrow Electric Company, became Vice-President and Sales Manager of the new respondent, still maintaining direct control over the sales of the Arrow Division, but assuming under his new position, control over the sales of the Hart & Hegeman Division, as well. 759

Mr. John R. Cooke, formerly in charge of the special appliance division of the Hart & Hegeman Manufacturing Company, was appointed General Manager and Vice-President of the new respondent, in charge of special appliances, of both the Arrow and the Hart & Hegeman divisions.

Mr. J. W. Alexander, formerly Hart & Hegeman's District Sales Manager, Baltimore-Philadelphia territory, was placed in charge of the district sales of both divisions in that territory, with office at

760 *Findings as to the Facts and Conclusion.*

Philadelphia, certain changes having been made in the territory to be covered.

Mr. A. P. Deacon, former Arrow District Manager in the Baltimore-Philadelphia territory, was made Joint Manager of both divisions in the Metropolitan New York area, with office in New York City.

Mr. G. S. Wentworth was made Joint Manager of both divisions in what was known as "Upper New York State" territory, with headquarters at Syracuse, N. Y.

761 Mr. A. C. Nelson, formerly Arrow District Manager in the New England territory, was made Joint Manager of both divisions in that same territory, with office in Boston.

Mr. J. W. Saladine, former Hart & Hegeman Manager in the New England territory, was transferred to the Hartford office of the new respondent and placed in charge of special promotional work of both divisions.

Mr. Paul Ramsey, former Arrow salesman at Atlanta, Georgia, was made Joint Southern Manager of both divisions over a new territory created in the South, with his District Sales Office in Atlanta.

762 Mr. R. E. Lubeck, former Western Manager of Hart & Hegeman Manufacturing Company, located in Chicago, was made Joint Manager of both divisions for a new territory with headquarters at Detroit, Michigan.

Mr. R. L. Wildauer, former Arrow Western Manager at Chicago, was made Joint Manager of both Divisions for a newly created Western territory, with headquarters at Chicago.

During 1930 and 1931, the same salesmen, soliciting business in the State of Texas and the City of New Orleans, began to represent both divisions.

Also, in the States of New Hampshire, Vermont and Maine, as well as the State of Connecticut, the same salesmen began to represent both divisions.

In the balance of the territory of the United States covered by the sales organizations of the new respondent, salesmen of both divisions continued to call upon the trade generally, as before, but offered no price inducements, service inducements or credit inducements to obtain business from each other, and were responsible in all instances to common District Sales Managers.

Separate catalogues have been published by the two sales divisions of the new respondent since January 1, 1929, but these catalogues carry practically the same printed matter, describing new items that are brought out by the new respondent under their respective trade marks, "Arrow" and "H. & H.", and some new items bear the combined trademark, "Arrow-H & H." While there is no competition between these two sales divisions of the new respondent there still remains a form of rivalry in the promotion of sales. 764

PARAGRAPH SEVEN: The sales of the Arrow Electric Company during the time it was operated as a subsidiary of the said original respondent, were approximately as follows: 765

1927	$3,849,000
1928	3,537,000

and during the first year the Arrow business was conducted by the Arrow Division of the new respondent, the sales were approximately $3,584,000.

The sales of the Hart & Hegeman Manufacturing Company, during the time it was operated as a sub-

766 *Findings as to the Facts and Conclusion.*

sidiary of the original respondent, were approximately as follows:

1927	$1,537,000
1928	4,478,000

and during the first year the Hart & Hegeman Manufacturing Company business was conducted by the Hart & Hegeman Division of the new respondent, the sales were approximately $1,599,000.

The total volume of sales of both the said Arrow Electric Company and the said Hart & Hegeman
767 Manufacturing Company during 1927 was in excess of 25 per cent of the total volume of sales of all manufacturers of electrical wiring devices of all descriptions during that year.

At the time the testimony was taken in this proceeding, the principal competitors of the new respondent were the General Electric Company, the Bryant Division of the Westinghouse Electric Company, the Hubbell Company, Pass & Seymour, Weber Electric and Cutler & Hammer companies, all of which sell full line of electrical wiring devices similar to that sold by the said new respondent. In addition there are other competitors who
768 sell limited or special lines. The total volume of sales of the said new respondent exceeds the volume of sales of parallel lines of electrical wiring devices of any one of its competitors and the said new respondent has assumed a dominant position in the electrical wiring devices industry, it being the largest producer of electrical wiring devices in the United States.

PARAGRAPH EIGHT: Since January 1, 1929, the said new respondent has combined a number of manufacturing departments, which has resulted in

substantial saving in the cost of production of many of the electrical wiring devices manufactured and sold by the said new respondent. The manufacturing profit of the two operating companies, namely, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, during 1927 was 31 per cent, and in 1928 was 34 per cent, and the manufacturing profit of the Arrow and the Hart & Hegeman divisions of the new respondent for the year 1929 was 35 per cent. In addition, substantial economies in designing and manufacturing were realized by the new respondent as a result of the 770
consolidation of the engineering departments of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, and also there has been substantial development in the field of experimentation as a result of such consolidation. Price levels of electrical wiring devices have not increased since the year 1927, and on some items the prices have been reduced, with no corresponding reduction in quality.

The net profits realized by the Arrow Electric Company and the Hart & Hegeman Manufacturing Company for the years 1927 and 1928, were as follows:

771

Arrow, for 1927	$500,000
1928	$600,000

Ratio to net sales for both years, 13 per cent.

Hart & Hegeman for 1927, net profit	$470,000

Ratio to net sales 8 per cent

1928, net profit	$639,000

Ratio to net sales, 14 per cent.

In 1929, the Arrow Electric Division of the new respondent made a net profit of $585,000, which was

772 *Findings as to the Facts and Conclusion.*

12 per cent of the net sales, and the Hart & Hegeman Division made a net profit of $768,000, which was 16 per cent of the net sales.

PARAGRAPH NINE: The effect of the acquisition by the said original respondent of the common stocks of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, on or about October 10, 1927, has been, is and may be—

(a) To substantially lessen competition between the said Arrow Electric Company and
773 the Hart & Hegeman Manufacturing Company in the sale and distribution of electrical wiring devices in interstate commerce;

(b) To restrain interstate commerce in electrical wiring devices in those sections and communities where the said Arrow Electric Company and the said Hart & Hegeman Manufacturing Company were engaged in business;

(c) To tend to create a monopoly in the electrical wiring devices industry.

PARAGRAPH TEN: The divestment by the said original respondent of the common stock of the said
774 Arrow Electric Company and Hart & Hegeman Manufacturing Company to the holding companies organized by said original respondent in December, 1928, as set forth herein, was not such a divestment as to constitute a compliance with the said Clayton Act.

PARAGRAPH ELEVEN: The course of action of the said original respondent in organizing the said new respondent, as described in Paragraph Five hereof, was not taken to restore the competition which had

previously existed between the said Arrow Electric Company and the said Hart & Hegeman Manufacturing Company, but was in part to avoid a claim for income tax by the United States Treasury Department, and in part an artifice and subterfuge designed in an attempt to evade the provisions of Sections 7 and 11 of the said Clayton Act and to perpetuate the elimination of all competition which had existed prior to October 10, 1927 between the said Hart & Hegeman Manufacturing Company and the said Arrow Electric Company.

776 PARAGRAPH TWELVE: The effect of the organization of the said new respondent and the acquisition by it, through merger, of the common or voting stocks of the said Arrow Electric Company and the said Hart & Hegeman Manufacturing Company, and of the assets of said two last named corporations, on December 31, 1928, as hereinbefore described in Paragraph Five, has been, is and may be—

(a) To substantially lessen competition between the said Arrow Electric Company and the Hart & Hegeman Manufacturing Company in the sale and distribution of electrical wiring 777 devices in interstate commerce;

(b) To restrain interstate commerce in electrical wiring devices in those sections and communities where the said Arrow Electric Company and the said Hart & Hegeman Manufacturing Company were engaged in business;

(c) To tend to create a monopoly in the said new respondent in the electrical wiring devices industry.

778 *Findings as to the Facts and Conclusion.*

CONCLUSION.

The acquisition by the said original respondent, Arrow-Hart & Hegeman, Inc., of all the outstanding common or voting stocks of the said Hart & Hegeman Manufacturing Company and Arrow Electric Company, and the continued ownership and/or control, and the voting of said stocks by the said original respondent, which culminated in the organization of the said new respondent, The Arrow-Hart & Hegeman Electric Company, and the
779 acquisition by the said new respondent, through merger, of the common or voting stocks of the said Hart & Hegeman Manufacturing Company and Arrow Electric Company and of the assets of the two last named corportions, under the conditions and circumstances described in the foregoing findings, constitute a violation of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act).

By the Commission.

780 (Seal)

CHARLES H. MARCH,
Acting Chairman.

Dated this 6th day of
July, A. D., 1932.

Attest:

OTIS B. JOHNSON,
Secretary.

Order to Divest. 781

UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 6th day of July, A. D. 1932.

Commissioners—WILLIAM E. HUMPHREY, *Chairman*,
CHARLES H. MARCH,
EDGAR A. MCCULLOCH, 782
GARLAND S. FERGUSON, JR.,
C. W. HUNT.

IN THE MATTER of ARROW-HART & HEGEMAN, INCORPORATED, and THE ARROW-HART & HEGEMAN ELECTRIC CO.	Docket 1498.

This proceeding having been heard by the Federal Trade Commission upon the complaint and supplemental complaint of the Commission, the answers of respondents, the testimony, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act): 783

NOW, THEREFORE, IT IS ORDERED, that the said respondent, The Arrow-Hart & Hegeman Electric

Company, forthwith cease and desist from violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes", and within ninety (90) days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Company acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Company and Ar-
785 row Electric Company, The Arrow Manufacturing Company, and The H & H Electric Company on or about December 31, 1928, so as to include in such divestment the said Hart & Hegeman Manufacturing Company's manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of the said Hart & Hegeman Manufacturing Company; or within ninety (90) days from the date of the service upon it of a copy of this order divest itself absolutely, in good faith, of all the com-
786 mon stock of the said Arrow Electric Company acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Company, Arrow Electric Company, The Arrow Manufacturing Company, and The H & H Electric Company on or about December 31, 1928, so as to include in such divestment the said Arrow Electric Company's manufacturing plants and all other property necessary to the conduct and operation thereof as a complete going concern, and so as neither directly nor indirectly, to retain any of the fruits of the acquisition of the common stock of the said Arrow Electric Company.

IT IS HEREBY FURTHER ORDERED that the said new respondent, The Arrow-Hart & Hegeman Electric Company, shall within ninety (90) days from the date of service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Hart & Hegeman's Manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern; or within ninety (90) days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Arrow Electric Company's manufacturing plants and equipment 788 and all other property necessary to the conduct and operation thereof as a complete going concern.

AND IT IS FURTHER ORDERED that such divestment of the common stock or assets of the said Arrow Electric Company or Hart & Hegeman Manufacturing Company, as the case may be, shall not be made directly nor indirectly to the said The Arrow-Hart & Hegeman Electric Company or to any stockholder, officer, director, employee or agent of, or any one otherwise directly or indirectly connected with or under the control of the said The Arrow-Hart & Hegeman Electric Company.

AND IT IS HEREBY FURTHER ORDERED that the respondent The Arrow-Hart & Hegeman Electric Company, within four months from the day of the date of the service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has conformed to this order. 789

By the Commission, Commissioner Humphrey dissenting in memorandum attached.

OTIS B. JOHNSON,
Secretary.

(Seal)

790 **Dissent of Chairman Humphrey.**

IN THE MATTER of ARROW-HART HEGEMAN, INC.	Docket No. 1498.

July 2, 1932.

There is no injury to the public shown in the alleged transfer of stock in this case. There is no
791 evidence to show any injury, except the mere blotting out of whatever competition there existed between the two corporations.

It seems the majority of the Commission has consistently held in all these Section 7 cases, that the mere acquisition of stock of one corporation by a competing corporation is in itself a violation of the statute, regardless of the effect of such acquisition on the public.

Paragraph II of the order directs that the respondent divest itself absolutely of all the common stock it acquired as a result of the merger, so as to include in such divestment manufacturing plants
792 and all other property necessary to conduct and operate a complete, going concern.

Did the respondent acquire stock "by merger?" If so, what was the value of such stock? What does it now represent? If the respondent divests itself of such stock, what is the effect of such divestment?

It appears so plain that none will dispute it, that even granted that the respondent did acquire stock by this merger, it is utterly valueless, and to compel the respondent to divest itself of such stock would be an idle gesture.

I do not think that the Commission ought to spend its time and money in so futile a performance.

The third paragraph of the order directs the respondent absolutely to transfer assets, without in any way directing the transfer of the stock. I do not believe that the Courts will ever hold that the Commission has the power to make an order of the character stated either in the first or second paragraph.

The Section 7 cases have always been regarded by the Commission as especially reprehensible. The acquisition of stock has been the one unpardonable sin.

From the beginning, the Commission has had em- 794
ployes assigned the duty of reading the papers to see if there were any violations of Section 7 of the Clayton Act. No such method has been followed in regard to any other class of cases. These employes immediately report any item that appears in the press involving stock acquisition. Then, on the merest ex parte showing, without any preliminary hearing as in other cases, complaint is issued and served upon the respondent. The supposed justification for such action was that the respondent might acquire the assets and oust our jurisdiction. Even if true, it did not in any way relieve the respondent from being prosecuted by the Department 795
of Justice if the law had been violated. The anxiety of the Commission to exercise its jurisdiction in these cases, in view of its "successes" is hard to understand.

The record shows that we have had about 800 preliminary inquiries and investigations of Section 7 cases. Complaints have been issued in 59 cases. 41 of these cases were afterwards dismissed by the Commission. Order of divesture was issued in 9 cases. One of these was sustained by the Circuit Court, but it is the almost universal opinion of the

bar of the country that if this case could have been reviewed by the Supreme Court of the United States it would have been reversed. One order was sustained in part by the Supreme Court. All the others have been reversed by the Supreme Court. This is the sum of what has been accomplished in over fifteen years of vigorous prosecution under Section 7 of the Clayton Act. Has the result justified the action of the Commission?

It seems to me, in view of this record of accomplishment, that the Commission is not justified any
797 longer in expending large sums of money in trying these cases—and in refusing to follow the decision of the Supreme Court in the International Shoe Company case, when, speaking of the Clayton Act, they said,

> "the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree * * * that is to say, to such a degree as will injuriously affect the public,"

798

Testimony. 799

BEFORE

FEDERAL TRADE COMMISSION.

IN THE MATTER of ARROW-HART & HEGEMAN, INC., and THE ARROW-HART & HEGEMAN ELECTRIC CO.	Docket No. 1498.

800

Conference room, Arrow-Hart & Hegeman Electric Co., 103 Hawthorne Street, Hartford, Connecticut.

May 25, 1931.

Met pursuant to notice, 10 a. m. Eastern Standard Time.

Before—WILLIAM C. REEVES, *Examiner*.

APPEARANCES:

801

E. F. HAYCRAFT, Attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of GROSS, HYDE AND WILLIAMS, 49 Pearl Street, Hartford, Connecticut, attorneys for the respondent.

ARTHUR F. SHIPMAN, of SHIPMAN AND GOODWIN, 15 Lewis Street, Hartford, Connecticut, attorney for the respondent.

802

Testimony.

PROCEEDINGS.

Examiner Reeves: We will proceed in the matter of the Arrow-Hart & Hegeman, Inc., and The Arrow-Hart & Hegeman Electric Co., docket number 1498, pursuant to the order of the Federal Trade Commission, dated April 28, 1931. The hearing was convened, pursuant to order, in the South Room, second floor, Old State House Building, Hartford, but by agreement of counsel an adjournment was taken to the conference room of the Ar-
803 row-Hart & Hegeman Electric Co., 113 Hawthorne Street, Hartford.

(A discussion was had off the record.)

Mr. Gross: I should like to have it noted on the record, in connection with the motion to dismiss, we raise the question of jurisdiction, on the ground that the old respondent, so called, Arrow-Hart & Hegeman, Inc., has been dissolved, and that the new respondent, so called, The Arrow-Hart & Hegeman Electric Co., is not subject to the jurisdiction of the Federal Trade Commission, and that we preserve our rights under the motion to dismiss, which is being presented to the honorable Federal
804 Trade Commission, and which, as I understand it, we are given leave to renew before final hearing before the Commission.

Examiner Reeves: That is the understanding of the Examiner.

Have you a witness present, Mr. Haycraft?

Mr. Haycraft: I will call Mr. Williams.

SAMUEL P. WILLIAMS, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. State your name, business, and present occupation. A. Samuel P. Williams, home address, 110 Kenyon Street; occupation, vice-president of The Arrow-Hart & Hegeman Electric Company.

Q. How long have you occupied that position? A. Since the company was organized.

806 Q. What date was that? A. It was on December 31, 1928.

Q. Prior to that time what was your occupation? A. I was vice-president of Arrow-Hart & Hegeman, Incorporated.

Q. How long did you occupy that position? A. During the time of its existence.

Q. When was it organized? A. About October 10, 1927.

Q. Prior to that time what was your occupation? A. I had been president of the Hart and Hegeman Manufacturing Company.

Q. For how long? A. From the 15th of February until—

807 Q. What year? A. In 1927.

Q. Prior to February 15 what was your occupation? A. I was vice-president of the Hart and Hegeman Manufacturing Company.

Q. For how long? A. To my recollection, perhaps five years.

Q. As vice-president what were your duties? A. In the Hart and Hegeman Manufacturing Company?

808 *Samuel P. Williams—Direct.*

Q. Yes. A. Mainly connected with sales, and financial departments of the business under Mr. Morris.

Q. Will you give the full name of Mr. Morris? A. Shiras Morris.

Q. And you succeeded Mr. Morris as president of the Hart and Hegeman Manufacturing Company? A. Yes, upon his death.

Q. He died sometime in January? A. On February 2, 1927.

Q. Just what were your duties as vice-president
809 in the sales and financial departments of the business? A. Mainly as counselor, and general over sight.

Q. Did you have charge of the sales of the company? A. *No, not directly.* They were under the sales manager.

Q. He was under you? A. Yes.

Q. And who was the sales manager? A. H. L. Everest.

Q. That five years that you were vice-president, did your duties remain about the same during that entire time? A. They did.

Q. Prior to that time were you associated with
810 the Hart and Hegeman Manufacturing Company? A. Yes. I came with them on September 1, 1918, as secretary.

Q. It was in October, 1927, that you became vice-president of Arrow-Hart & Hegeman, Incorporated? A. Yes.

Mr. Haycraft: I think it should be noted on the record that when we refer to the old respondent we refer to Arrow-Hart & Hegeman, Incorporated, and when we refer to the new

respondent we refer to the Arrow-Hart & Hegeman Electric Company.

Mr. Cross: Yes.

Q. Did you have anything to do with the formation or the organization of t old respondent in this case? A. Under advice of counsel, I was engaged in it.

Q. Whom did you represent in the transactions —in the part that you took in it? A. Represented the Hart and Hegeman Manufacturing Company.

Q. Just briefly describe—because we have the official papers in that—what transpired, what you did in respect to the organization of the old respondent? A. I presided at the meetings which were held in connection with that matter. 812

Mr. Gross: I don't think you are clear on that. Do you mean the steps leading up to it?

The Witness. Do you mean the historical feature?

Q. Just what part you had in it, the first steps that you took, and what they were, and when. A. Following Mr. Morris's death, it was, of course, necessary for his family to reduce their holdings. 813

Q. Just a moment, before you go into that. Had Mr. Morris any negotiation along that line before his death? A. He never had any negotiations as far as I know. I do know that he felt the need of a stronger organization, and that in his own mind he hoped some day to bring about a strengthening of the company to meet the more severe conditions, but there had been no negotiations at all.

Q. He had talked to you about this, about such a need? A. I knew it was in his mind from the way

814 *Samuel P. Williams—Direct.*

he talked, although there were never any definite conversations along that line:

Q. Just refresh your recollection, Mr. Williams, on this point. At this time I show you what purports to be a copy of a letter which you wrote on August 9, 1927, to Frank P. Furlong. He was one of the stockholders? A. Yes.

Mr. Haycraft: I ask that this be marked "Commission's exhibit number 1 for identification". There are three letters; one, dated August 8, 1927, from Mr. F. P. Furlong to Mr. Samuel P. Williams; Mr. Williams's reply of August 9, 1927, and Mr. Furlong's reply to Mr. Williams of August 10. I ask that this sheaf of papers be marked "Commission's exhibit number 1 for identification, A, B, C," if it is agreeable.

815

(There was a discussion off the record.)

Examiner Reeves: This document, consisting of four pages, will be marked for identification Commission's Exhibit number 1.

(The sheaf of papers were thereupon marked "Commission's Exhibit number 1 for identification.")

816

Q. I show you this paper, which is marked "Commission's exhibit number 1 for identification, "the second paragraph of your letter to Mr. Furlong, dated August 9, 1927, and ask you whether you recall that Mr. Morris talked with you about a merger of some kind with the Arrow Electric Company before he died, as indicated in that letter. A. He had not definitely talked with me about it. The statement possibly is a trifle over-positive, but I realized that Mr. Furlong, as a stockholder, who

was well acquainted with Mr. Morris, also our salesmen and all of our organization, had a great admiration for Mr. Morris, and also knowing that Mr. Morris in the past year or two had felt this need of a stronger organization, I realized that if these men knew and understood that it was along lines which he favored, that they would be themselves enthusiastic supporters of the plan.

Q. The papers which you just referred to, are copies, are they not, of originals which are in your files? A. Yes.

818 Mr. Haycraft: I think I will offer them in evidence at this time.

Examiner Reeves: Are there any objections?

Mr. Gross: No objection.

Examiner Reeves: These documents, heretofore marked for identification as Commission's Exhibit number 1, are received in evidence as Commission's Exhibit number 1.

(The sheaf of papers referred to was received in evidence and marked "Commission's Exhibit number 1.")

819 Q. Will you state at this time, Mr. Williams, what was the need that Mr. Morris felt for a stronger organization, which was the expression you used? A. Simply that the industry was becoming more complex, and required more capital to operate, or, rather, more resources to operate successfully. Competition was growing more and more severe, and we possibly had deficiencies in our organization, personnel, and otherwise, which he felt should be strengthened.

Q. Just describe briefly the extent of your organization, the factories and your branch offices,

820 *Samuel P. Williams Direct.*

and so on, at the time he died? A. We had the properties on Capitol Avenue and the plant known as our South Works, in Hartford, and the property of the H. T. Paiste Company, in Philadelphia.

Q. Will you describe, as you go along, what the products were which were made at these various factories? A. At the Hartford plant,—at both of the Hartford plants we manufactured exclusively the switch line, and in Philadelphia we manufactured the socket line, and cut-outs, entrance switches, receptacles, and sign receptacles, and ma-
821 terial of that nature. There was also the plant of the Electric Porcelain & Manufacturing Company at Trenton, New Jersey, which supplied both the Hartford and Philadelphia plants with the raw materials of porcelain.

Q. What was made from the porcelain? A. The porcelain end went very largely, or did at that time, into every product of the company.

Q. What was the capitalization of the Hart and Hegeman Company at that time? A. The capital stock of the Hart and Hegeman Manufacturing Company was then 200,000 common and 300,000 preferred.

822 Q. What was your valuation as placed on there, the assets at that time? A. In the neighborhood of three and one-half million.

Q. How was that valuation assessed? How did you arrive at that figure? A. According to the book accounts.

Q. How would you arrive at your value of your real estate, and such assets as that? On appraisal? A. No, those were the cost of real estate and of all other assets, less depreciation.

Q. What was the value of the plant at Philadelphia and the plant at New Jersey? A. From the books?

Q. Yes, according to the books. Would you have to consult some records on that? A. I would have to refer to some records, yes.

(There was a discussion off the record.)

Q. What investment did your firm have at those places? A. According to my recollection, our firm had an investment in the Paiste plant of about $400,000.

Q. What about the New Jersey plant? A. Also, according to my recollection, our company had an investment of about $195,000. 824

Q. Had the Hart and Hegeman Manufacturing Company been conducting business at a profit? A. Yes, sir.

Q. Had you been paying dividends regularly? A. Yes.

Q. And what dividends did you pay during the three years just prior to the time Mr. Morris died? A. We paid regular dividends on the preferred of seven per cent.

Q. And on the common stock? A. Various dividends. As I recall, about three dollars per share. That is subject to revision.

Q. How long were you secretary of the Hart and Hegeman Manufacturing Company? A. I believe five or six years. 825

Q. Were you secretary until the time you were made president? A. No, until the time I was made vice-president.

Q. Yes, until you were made vice-president. Do you recall now when you acquired the capital stock of the Paiste Company? A. The acquisition of the stock of the Paiste Company began in 1914, according to my recollection.

826 *Samuel P. Williams—Direct.*

Q. And it was more periodical? A. Yes, sir.

Q. Did you have a running account between your firm and the Paiste Company? A. With respect to stock?

Q. With respect to the goods. A. There was first the sales agreement, whereby Hart and Hegeman became the exclusive sales agent for the Paiste product, and, of course, during that time—

Q. Well, did you advance money to assist in the manufacture of the product? A. Yes, we did from time to time.

827 Q. And did you take preferred stock as payment for the indebtedness? A. No, I don't think we ever did that. Any stock that was bought was bought outright. We never purchased any stock from the company itself.

Q. I show you what purports to be the minutes of a special meeting of the Board of Directors of the Hart & Hegeman Manufacturing Company held on December 4, 1925, and ask if you can identify this as the minutes of that company. A. I believe they are, yes, sir. We had them made here.

Mr. Haycraft: I offer that set of minutes in
828 evidence and ask that it be marked "Commission's Exhibit number 2."

Examiner Reeves: Are there any objections?

Mr. Gross: No objections.

Examiner Reeves: This document, consisting of three pages, will be received in evidence as Commission's Exhibit number 2.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit number 2.")

Q. I notice in this reference was made to the acquisition of preferred stock of the Paiste Com-

pany about that time. Do you recall whether that purchase went through? A. The preferred stock was also purchased gradually from time to time from the stockholders who owned it and eventually it was all acquired.

Q. You eventually purchased all the common stock and all the preferred stock? A. Yes, sir.

Q. And during that period of time, from 1914 to 1927, that company was engaged in the manufacture of products for the Hart and Hegeman Manufacturing Company? A. Yes, sir.

Q. Principally sockets, did you say? A. Yes, 830
sir, principally sockets.

Q. I show you what purports to be the minutes of the annual meeting of the stockholders of the Hart and Hegeman Manufacturing Company of January 13, 1926, and ask you if you can identify that? A. I do identify that.

Q. Is that the minutes of the Board of Directors? A. The stockholders.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: Are there any objections?

Mr. Gross: No objections.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit 831
number 3.

(The document referred to was received in evidence and marked "Commission's Exhibit number 3.")

Q. I notice in this exhibit reference is made to a report of your president concerning the company's business during the fiscal year 1925, outlining its plans and prospects for the year ahead and remarking particularly on the policy and activities of

832 *Samuel P. Williams—Direct.*

competitors, and their possible effect. Is that an oral report or a written report? A. An oral report.

Q. Do you have any independent recollection of the kind or nature of the report other than expressed here? A. No, I have not.

Q. You mentioned something about competitors and the competition which the company had to meet. Do you have any recollection now as to the competitive situation which was brought particularly home to your firm in 1925 and 1926? A.
833 No, I can't recall in detail what the competitive situation was. Simply, from year to year, it grows more intense. It was beginning to then.

Q. What form would those competitive conditions take? A. I presume that we were finding it more and more difficult to hold our share of the business because of the fact that competitors were employing more salesmen, using more aggressive methods, increasing their advertising; making it more difficult for us.

Q. Were there any of what you would call unfair methods being employed at that time? A. No.

Q. How did your sales in 1926 compare with
834 your sales in 1925, the total sales? A. I don't recall without—

Q. From 1925 and 1924 do you recall? A. I don't think I recall.

Q. As a matter of fact, aren't the sales in 1926 the largest in the history of the company? A. I would have to refer to the records.

Examiner Reeves: We will take a short recess for five minutes.

(A short recess was taken.)

Q. What figures do you have there? Do you have the figures for 1925 and 1926? A. Both.

Q. You do not have them for 1924? A. No, sir.

Q. What were they for 1925 and 1926? A. The figures for 1925, the total, including export sales, to other manufacturers, and all other sales, were $3,951,671; those for 1926 were $3,976,000.

Q. Can you testify whether or not since 1921 you have exceeded your sales in 1926? A. They have been exceeded in 1928 and 1929.

Mr. Gross: Since 1921, I think he said.

A. Since 1921 and before that—I haven't at present those figures at hand, no, sir. 836

(There was a discussion off the record.)

A. (Continuing) The earliest I can give you was in 1924.

Q. All right. A. In that year the total sales were—

Mr. Gross: Of what?

A. (Continuing) —of every description of the Hart and Hegeman Manufacturing Company, were $3,341,386.

Q. I show you what purports to be the minutes of the adjourned meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company on December 1, 1926, and ask you whether you can identify that paper. A. I identify this as being made here from our minute book. 837

Mr. Haycraft: I offer that paper in evidence.

Examiner Reeves: This will be received in evidence as Commission's Exhibit number 4.

838 *Samuel P. Williams Direct.*

(The same was thereupon received in evidence and marked "Commission's Exhibit number 1".)

Q. Were the plans covered by the resolution included in this exhibit carried out with respect to the assets of the Electric Porcelain & Manufacturing Company? A. Yes, sir.

Q. And it became, then, a plant owned by your firm at that time? A. Yes.

Q. How long had the Electric Porcelain & Manu-
839 facturing Company been manufacturing porcelain fixtures for your company prior to the date of this meeting? A. I don't know when they first began manufacturing goods for the H. T. Paiste Company. It was a long time back—a long time back. May I state the reason for that recapitalization?

Q. Yes, sir. A. The reason was that there was some few shares of the stock of the Electric Porcelain and Manufacturing Company whose owners could never be located. It was merely to clear up that situation.

Q. What did you do in clearing that up? A. We made demand upon the Electric Porcelain & Manu-
840 facturing Company for the payment of money advanced to it and owing to the company, and agreed to accept the assets of the company in payment of those debts.

Q. As indicated in this resolution? A. As indicated in this resolution; yes.

Q. I show you what purports to be the minutes of the annual meeting of the stockholders of the Hart and Hegeman Manufacturing Company on January 12, 1927, and ask if you can identify that paper. A. I do identify it.

Mr. Haycraft: I offer it in evidence.

Examiner Reeves: This will be received in evidence as Commission's Exhibit number 5.

(The document referred to was received in evidence and marked "Commission's Exhibit number 5.")

Q. Here again I notice that the president, who at that time was Mr. Morris, made a report of the company's business for a year just closed and referred to the prospects and the problems of the year ahead, touching upon the questions of competition, probable cost of the volume, and the plans to adapt sales and factory facilities to conditions as they arise. Do you recall the nature of that report? Is it a written report? A. It was not a written report. It was in the way of the usual report which Mr. Morris would make at such a time. 842

Q. Do you have any recollection as to what he had to say about questions of competition existing in January, 1927? A. Nothing, as far as I know. I only know that competition to a manufacturer is the thing which looms up as a great obstacle to doing business, and it is very natural for them to be discussed.

Q. I ask if you can identify these papers, which purport to be the minutes of the meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company of February 15, 1927. A. I do identify that. 843

Mr. Haycraft: I will offer that in evidence.

Examiner Reeves: This document, consisting of three pages, will be received in evidence and marked "Commission's Exhibit number 6."

844 *Samuel P. Williams Direct.*

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit number 6.")

Q. On the third page reference is made to a discussion by Mr. Williams. That refers to yourself? A. Yes, sir.

Q. And reference is made to negotiations with outside interest. Do you recall at this time what the nature of your statement was to the company on that occasion, on February 15, 1927? A. Yes,
845 that referred to the sufficiency of our organization to carry on, with Mr. Morris's death, and to the practical certainty that we would have to make some changes in plans whereby the Morris estate would eventually be able to take their money out.

Q. Did you have any negotiations on foot at that time? A. None whatsoever.

Q. Then the reference would refer to a possible negotiation, rather than negotiations which were in existence? A. Yes, sir, that would.

Q. At that time you were made president of the Hart and Hegeman Manufacturing Company, I believe, is that correct? A. I think so, yes, sir.

846 Q. And Mr. Arthur P. Day succeeded Mr. Morris as member of the Board of Directors? A. Yes.

Q. What was Mr. Day's other occupation? A. He is chairman of the board of the Hartford Connecticut Trust Company.

Q. He is not a practical man? A. No, sir.

Q. I mean by that he is not engaged in this business? A. That is right.

Q. What was his connection with the company? A. With this company?

847

Q. Yes. How did he happen to be elected a director? A. Well, he was a director where Mr. Morris's trusts were lodged.

Q. Mr. Everest was the sales manager at that time? A. Yes, sir.

Q. How long had he been sales manager? A. He has been sales manager

Q. At that time? A. Since 1917, I think.

Q. Who is your technical man in charge? A. Monroe Gentt.

Q. Was he an engineer, as well as practically trained? A. Yes.

848

Q. How long had he been in charge of that end of the business? A. Since the organization of the company, 1890.

Q. Who is Mr. Buell in the organization? At that time was he connected with the firm? A. He was not. He was and is a stockholder in Hartford.

Q. Engaged in some other business? A. As stock broker.

Q. And Mr. Root? A. And Mr. Root was a father-in-law of Mr. Morris, and retired.

Q. Mr. Burt? A. Mr. Burt was president of the Phoenix State Bank and Trust Company.

Q. So far as practical men are concerned, yourself, Mr. Everest, and Mr. Gentt, were in charge of the business; would that be correct? A. If you mean in charge of manufacturing, no.

849

Q. Manufacturing and sales. A. Manufacturing and sales, yes, virtually. There were others, however, who were associated with us.

Q. With equal authority in the affairs of the company? A. In the way that we ran things; I would say almost with equal authority. They were delegated to positions of responsibility.

850 Q. Will you name some of them? A. In the factory, Mr. Sage, in the sales; he was superintendent of the factory. Mr. J. R. Cook. He was in charge of a very important branch of our sales, namely, the appliance business. I would say that covered the point virtually.

Q. Was Mr. Paiste still in charge of the factory at Philadelphia? A. Yes.

Q. Who was in charge of your porcelain factory in New Jersey? A. Mr. C. J. Ruckenbord.

Q. And they had a staff of men under them en-
851 gaged purely in the manufacturing? A. Yes.

Q. I show you what purports to be the minutes of a special meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company of July 28, 1927, to which is attached power of attorney, and ask you if you can identify this paper. A. I identify that.

Mr. Hayeraft: I offer that in evidence.

Examiner Reeves: This document, consisting of four pages, is received in evidence as Commission's Exhibit number 7.

(The document referred to was thereupon re-
852 ceived in evidence and marked "Commission's Exhibit number 7.")

Q. I take it that this is the action of the Board of Directors of the Hart and Hegeman Company in respect to the proposed organization of the old respondent? A. It is.

Q. I see that the letter here is written by you to the holders of common stock of the Hart and Hegeman Manufacturing Company, dated July 28, 1927. From that it is correct to assume that you conducted the negotiations. How long had you nego-

tiated for the organization of the old respondent, as indicated in this letter and in the minutes? A. For about three weeks.

Q. How did the matter come to your attention? Who proposed it and — A. Through a conversation with Mr. Grier.

Q. — and what was the occasion of the conversation? That is, how did the matter come up? A. Why, as I recall it, Mr. Grier and I — Mr. Grier asked me to call at his house, and thereupon he broached the subject to me.

Q. That would be about in the first part of July? 854
A. Yes.

Q. On the fourth of July? A. Immediately after the fourth of July.

Q. At that time did you make any memorandum of the plan that he proposed to you, or do you have any recollection of the proposition that he made to you on that occasion? A. It was just an evening social call.

Q. And then what happened? A. After we agreed in substance that it would be desirable, why, the plans went on rapidly.

Q. Do you recognize this memorandum which I hand you now? A. I do, yes, sir.

Q. What is it? A. A memorandum without date, 855
a sketch of the first initial steps which would have to be taken to bring the capitalization of the two companies into harmony.

Q. Did you prepare it? A. I did not.

Q. Do you know who did? A. It was prepared by Mr. Grier.

Q. Can you state about when it was that Mr. Grier gave you that memorandum? A. Probably within three or four days after the time of our first conversation.

856 *Samuel P. Williams - Direct.*

Mr. Haycraft: I offer that memorandum in evidence.

Mr. Gross: May I just see it?

(Mr. Haycraft handed a paper to Mr. Gross.)

Mr. Gross: No objection.

Examiner Reeves: This will be received in evidence as Commission's Exhibit number 8.

(The memorandum referred to was thereupon received in evidence and marked "Commission's Exhibit number 8".)

857 Q. Just for the sake of getting the record clear, I will ask whether or not there was any phase of this preliminary agreement or this memorandum that you identified that was not carried out. In other words, in principal, at least.

Mr. Gross: Wouldn't the agreement made show that better, Mr. Haycraft, than a conclusion of the witness?

Mr. Haycraft: Yes, it will.

Examiner Reeves: Do you withdraw the question?

Mr. Gross: I do not want to object to anything; only, I think it will complicate things

858 if he will undertake to say whether it was exactly that or not. You have the agreement right there.

Mr. Haycraft: Yes, sir.

Mr. Gross: I do not want to object, but I think the agreement will show it better.

The Witness: May I indicate a change which is obvious?

Mr. Haycraft: That is just my purpose, to show anything on the exhibit that is obvious.

Mr. Gross: You are not calling for a legal conclusion?

Mr. Haycraft: No.

Mr. Gross: Oh, I have no objection to that at all.

The Witness: I believe that whereas the memorandum states that the Hart and Hegeman Company would have the privilege of issuing preferred stock to the amount of $2,000,000, that that was not the amount of preferred stock authorized. In the fourth paragraph, the second word, "income" should be changed to "issue". "The issue which the Hart and Hegeman Company," and so forth. In the next to the last paragraph mention is made of the number of shares to be issued, and it is to have no par value, neither of which was exactly followed. 860

Q. I ask you if you can identify the paper I hand you now? A. I do.

Q. What is it? A. It is a similar memorandum, without date, containing comparative statistics of the earnings and assets of the two companies, and possible future earnings; purely as an estimate.

Q. Who prepared it? A. Mr. Grier. 861

Q. Did he give you that about the same time as the other memorandum? A. Probably a week or so later.

Mr. Haycraft: I offer it in evidence.

(There was a discussion off the record.)

Mr. Gross: No objection.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit number 9.

862 *Samuel P. Williams—Direct.*

(The memorandum referred to was thereupon received in evidence and marked "Commission's Exhibit Number 9".)

Q. I ask you to identify this sheaf of papers (handing papers to witness). A. I do.

By Examiner Reeves:

Q. Will you state briefly what they are? A. This is an agreement between Edward R. Grier and other stockholders of the Arrow Electric Company, whose
863 names are listed in schedule A, attached, and Samuel P. Williams, and other stockholders of the Hart and Hegeman Manufacturing Company, whose names are listed in schedule B.

By Mr. Gross:

Q. Dated? A. Dated August 6, 1927.

By Mr. Haycraft:

Q. Is that a correct copy, so far as you know? A. I believe it to be.

864

Mr. Haycraft: I offer the papers in evidence.

Examiner Reeves: These documents, consisting of eight papers, are received in evidence as Commission's Exhibit Number 10.

(The sheaf of papers referred to was thereupon received in evidence and marked "Commission's Exhibit Number 10".)

Mr. Haycraft: I want it to be understood that a copy is being submitted for the original agreement.

Examiner Reeves: That is agreeable to the Examiner.

865 Q. I hand you these papers and ask you if you can identify them. A. I identify this as a supplemental agreement made on October 6, 1927, between Edward R. Grier and other holders of common stock of the Arrow Electric Company, and Samuel P. Williams, and other holders of common stock of the Hart and Hegeman Manufacturing Company.

Mr. Haycraft: I offer that in evidence.

By Mr. Gross:

866 Q. Are the names there? A. Yes, they are typed in.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 11. It consists of two pages.

(The document referred to was received in evidence and marked "Commission's Exhibit Number 11".)

By Mr. Haycraft:

867 Q. As set forth in this agreement, and the supplemental agreement, can you testify whether or not the agreement of August 6, 1927, was carried out by the parties thereto? A. It was.

Q. Did you mail to the stockholders of the Hart and Hegeman Manufacturing Company, under date of July 28, 1927, the letter which is set forth, or a copy of the letter which is set forth, in Commission's Exhibit Number 7, under that date, and which was a part of the action taken by the Board of Directors of the association? A. Yes, sir.

868 *Samuel P. Williams—Direct.*

Q. I hand you this paper and ask you if you can identify it, which purports to be a letter from yourself to H. T. Paiste of July 29, 1927. A. I identify that as such a letter.

Mr. Haycraft: I offer it in evidence.

Mr. Gross: No objection.

Examiner Reeves: This document will be received as Commission's Exhibit Number 12.

(The document referred to was thereupon received in evidence and marked "Commission's
869 Exhibit Number 12".)

Q. Reference is made in this letter to a letter which you wrote to your branch managers. Do you have that letter among your files now?

(There was a discussion off the record.)

A. I don't think so.

Q. I ask you to identify these two letters. A. I identify these as letters written, one writen to myself by W. L. Urquhart, dated July 29, 1927, and one written by myself to Mr. Urquhart, dated August 1, 1927.

870 Q. Who is he? A. Mr. Urquhart was at that time export sales manager for the Hart and Hegeman Manufacturing Company, and a stockholder.

Q. This goes along with it, I believe (handing paper to the witness). A. Also a letter written by Mr. Urquhart to myself, dated August 2, 1927.

Mr. Haycraft: I offer these papers in evidence, which have been identified.

Examiner Reeves: This document, consisting of five pages, is received in evidence as Commission's Exhibit Number 13.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 13".)

Q. Is Mr. Urquhart still in your employ? A. No, he is not.

Q. I ask you if you can identify this paper? A. I identify this as a letter from myself, which I wrote to J. Oliver Morris, dated July 30, 1927.

Q. Who is he? A. He was a stockholder of the company and a brother of Mr. Shiras Morris.

872 Mr. Hayeraft: I offer that letter in evidence.

Examiner Reeves: This letter, consisting of two pages, will be received in evidence as Commission's Exhibit Number 14.

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit Number 14".)

Q. I ask you to identify these two papers. A. I identify this as a letter from H. T. Paiste to myself of August 2, 1927, and a letter to Edward Grier from H. T. Paiste, August 2, 1927.

Q. And this is the same Mr. Paiste that you have already referred to as being in charge of the plant 873 at Philadelphia? A. Yes, sir.

Q. Is he still in charge of that plant? A. He is out of business.

Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 15.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 15".)

874 *Samuel P. Williams—Direct.*

Q. I ask you to identify this paper. A. It is a letter to myself from Mr. A. R. Lubeck, dated August 1, 1927.

Q. Who was he at the time the letter was written? A. Manager of the Chicago office of the Hart and Hegeman Manufacturing Company.

Q. Sales? A. The sales office.

Q. Is he still there? A. Yes.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document is received
875 in evidence as Commission's Exhibit Number 16.

(The document referred to was received in evidence and marked "Commission's Exhibit Number 16".)

Q. I ask you to identify this paper. A. Just a moment; up there, where I state that about Lubeck. His headquarters are now in Detroit, and he still occupies the same relative position there.

I identify this as a memorandum from Mr. Grier to myself, dated August 11, 1927, with reference to possible economies which could be effected in operating the factories.

876

Mr. Haycraft: I offer the letter in evidence.

Examiner Reeves: This memorandum, consisting of two pages, is received in evidence as Commission's Exhibit Number 17.

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 17.")

Q. I ask you to identify this sheaf of papers. A. I identify them as a letter from myself to the dis-

tributors of the Hart & Hegeman Manufacturing Company, August 20, 1927; a similar letter from Mr. Edward R. Grier to distributors of the Arrow Electric Company, August 25, 1927, and a letter from Edward R. Grier to myself of August 27, 1927.

Q. The last letter is the one that comes from you, and the other from the company—the two letters which you described, dated August, 1927, to H. and H. stockholders—A. To H. and H. distributors.

Q. Yes, and the others, to the Arrow distributors, were transmitted to you by Mr. Grier at the time of the third sheet that you have there? A. August 25, was transmitted to me with this letter of August 27. 878

Q. How about the other one? A. It was not. It was written by myself.

Q. In other words, the letter which is addressed to the H. & H. distributors of August 20, 1927, was prepared by yourself at Mr. Grier's suggestion? A. I would say so, yes.

Mr. Haycraft: I offer the papers in evidence.

Examiner Reeves: These papers, identified by the witness, consisting of three pages, are received in evidence as Commission's exhibit number 18. 879

(The papers referred to were thereupon received in evidence and marked "Commission's Exhibit Number 18.")

Examiner Reeves: We will adjourn until 12:30.

(Whereupon, at 11:45 a. m. Eastern Standard Time, a recess was taken to 12:30 o'clock p. m., Eastern Standard Time.)

880 *Samuel P. Williams—Direct.*

AFTERNOON SESSION.

12:30 p. m. Eastern Standard Time.

DIRECT EXAMINATION (con.) BY MR. HAYCRAFT:

Q. I ask you if you can identify these papers, which purport to be the minutes of a special meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company held on September 19, 1927. A. I do identify it as the minutes of the Board of Directors of the Hart and Hegeman
881 Manufacturing Company held September 19, 1927.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This paper, consisting of four pages, is received in evidence as Commission's Exhibit number 19.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 19.")

Q. I ask you if you can identify this document which I hand you. A. I identify this as a letter to the holders of the Hart and Hegeman Manufactur-
882 ing Company preferred stock, dated September 19, 1927, from the secretary of the company.

Mr. Haycraft: That letter is also offered in evidence.

Examiner Reeves: This document, consisting of three pages, is received in evidence as Commission's Exhibit No. 20.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 20.")

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Q. I ask you if you can identify this paper which I hand you now. A. I identify this as a notice to the stockholders of the Hart and Hegeman Manufacturing Company, for the secretary, of a meeting of the stockholders to be held October 1, 1927. The notice is dated September 21, 1927.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This paper, consisting of two pages, is received in evidence as Commission's Exhibit number 21.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 21.")

884

Q. Will you also identify this paper, please. A. I identify this as a waiver of right to subscribe to five thousand, three hundred thirty-three shares of the six and one-half preferred stock of the Hart and Hegeman Manufacturing Company.

Q. What was the purpose of securing that waiver? A. In connection with the Hart and Hegeman Manufacturing Company issue of—a new issue of $1,333,300 preferred stock of the Hart and Hegeman Manufacturing Company.

885

Q. Which was a part of the reorganization of the old respondent? A. Yes, sir.

Q. As indicated in the agreement which you have already testified to? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Examiner Reeves: This paper, consisting of two pages, is received in evidence as Commission's Exhibit Number 22.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 22.")

886 *Samuel P. Williams—Direct.*

Q. I ask you if you can identify this paper, which purports to be the minutes of a special meeting of the stockholders of the Hart and Hegeman Manufacturing Company, held October 1, 1927. A. I identify it as such.

Mr. Hayeraft: I offer it in evidence.

Examiner Reeves: This document, consisting of eleven pages, is received in evidence as Commission's Exhibit Number 23.

887 (The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 23.")

Q. I ask you if you can identify this paper as the minutes of a special meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company held on October 21, 1927. A. I identify if as such.

Mr. Hayeraft: I offer it in evidence.

Examiner Reeves: This document, consisting of seven pages, is received in evidence as Commission's Exhibit Number 24.

888 (The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 24.")

Q. I ask you if you can identify this paper, which I hand you now. A. I identify this as a copy of the minutes of the meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company held on August 25, 1927.

Q. Will you just state for the record the purpose of the meeting of that date? A. It was a meeting at which the dividend of five dollars per share on the common stock of the company was declared.

889

Q. And that was part of the plan of reorganization of the old respondent? A. That was part of the plan.

Examiner Reeves: This paper will be received in evidence as Commission's Exhibit Number 25.

(The paper referred to was received in evidence and marked "Commission's Exhibit Number 25".)

Q. I ask you to identify this paper. A. I identify this as a circular letter issued by Thompson Fenn and Company, dated September 19, 1927, with reference to the issue of $1,333,300 of preferred stock of the Hart and Hegeman Manufacturing Company. I might say that Thompson Fenn and Company are stock brokers.

890

Mr. Haycraft: I offer that paper in evidence.

Examiner Reeves: This paper is received in evidence as Commission's Exhibit Number 26.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 26".)

891

Q. Will you identify this paper? A. I identify this as a letter from myself dated October 3, 1927, to holders of the common stock of the Hart and Hegeman Manufacturing Company, reporting the action taken at the stockholders and Board of Directors meetings held October 1.

Q. Will you identify this paper? A. I identiy this as a letter from myself, dated October 17, to holders of common stock of the Hart and Hegeman Manufacturing Company, reporting the organization of Arrow, Hart and Hegeman, Incorporated.

892 *Samuel P. Williams—Direct.*

Q. Is it with further reference to the first letter? A. It is.

Mr. Hayecraft: I offer the two letters together in evidence.

Examiner Reeves: These papers, described by the witness, are received in evidence and marked "Commission's Exhibit Number 27".

(The papers referred to were thereupon received in evidence and marked "Commission's Exhibit Number 27".)

893 Q. I ask you to identify this paper. A. I identify this as a copy of the minutes of the special meeting of the Board of Directors of the Hart and Hegeman Manufacturing Company, held on October 10, 1927.

Q. That was the date of the organization of the old respondents, wasn't it? A. It was.

Mr. Hayecraft: I offer the paper in evidence.

The Witness: It is very difficult to pick out just what the purport of it is without studying it.

Mr. Hayecraft: Yes.

894 Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 28.

(The document referred to was received in evidence and marked "Commission's Exhibit Number 28".)

Q. Can you identify this paper? A. This paper I identify as a broker's circular, issued by Thompson Fenn and Company and other underwriters in connection with the issue of $1,333,300 of preferred

stock of the Hart and Hegeman Manufacturing Company, dated September 22, 1927.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This is received in evidence as Commission's Exhibit Number 29.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 29".)

Q. I ask if you can identify this paper? A. This is a broker's circular of the Thompson Fenn Company, dated October 11, 1927, in conjunction with 896
other underwriters, with reference to the offer of 31,740 shares capital stock of Arrow-Hart and Hegeman, Incorporated.

Mr. Haycraft: I offer this in evidence.

Examiner Reeves: It will be received in evidence as Commission's Exhibit Number 30.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 30".)

Q. Will you explain just the sequence and the part these two announcements take in the organiza- 897
tion of the respondent corporation? A. The first circular was issued upon the occasion of the offering of the preferred stock of the Hart and Hegeman Manufacturing Company, which was a step bringing the capitalization of that company into a relation of forty to sixty as compared with that of the Arrow Electric Company.

Q. That is the proportion that they were to take in the new corporation? A. No, this was a preferred stock, a balance and preferred stock issue

898 *Samuel P. Williams—Direct.*

of the Arrow Electric Company which they had previously—perhaps a month or two, not knowing that this was coming about; they had issued that preferred stock, and this was a move to bring it into that relation of forty to sixty.

Q. Then, what is the second? A. The second is simply a broker's advertisement that they had for sale Arrow-Hart and Hegeman, Incorporated.

Q. That is the old respondent? A. Yes, the old respondent.

Q. What was the purpose of offering for sale 31,-
899 740 shares of the corporation of the old respondent? A. This was a disposition of the investment in this company originally held by Mr. Morris and his estate; that is, the widow and the estate.

Q. What became of the proceeds of that stock? A. It had gone by purchase to Mrs. Morris.

Q. In other words, that was her way of getting cash out of the transaction? A. That and her portion of the preferred stock. The stock gave her some and this gave her the balance.

(A short recess was taken.)

900 Q. Well, Mr. Williams, possibly, in order to get the record clear, and show how these exhibits, which were admitted in evidence, fit into the plan of organization of the old respondent, I will ask you to testify what you did, or what was done, with respect to the organization of the old respondent corporation, and you can refer to those exhibits as you go along, if you will,—how they fitted into the plan of organization, from your angle of it. A. As I recall, after the capitalization of the Hart and Hegeman Manufacturing Company had been brought into harmony,—

901

Q. That was done at meetings— A. As recorded in the minutes.

Q. Already identified? A. Yes. Then, I think, the steps are all shown in these minutes.

Q. Let us take the exhibits as we go along. Here is, for instance, Exhibit 10. That is the agreement under which you proceeded? A. That is the agreement.

Q. As amended? A. As amended. The recapitalization of the Hart and Hegeman Manufacturing Company was effected virtually as covered in the agreement.

902

Q. Commission's Exhibit 19, 20, 21, 22, 23,— A. The original 300,000 preferred stock of the Hart and Hegeman Manufacturing Company was called for payment and retired. Also, the preferred stock of the H. T. Paiste Company, 150,000, less the amount held in the treasury, was also called and retired. The funds for these were obtained 5,333 shares of the new preferred stock; the remaining 8,000 shares were issued as stock dividends.

Q. To holders of the Hart and Hegeman Manufacturing Company? A. Yes, sir, in accordance with the agreement.

903

Q. Then, what happened after the stock was put on a parity of a sixty to forty basis with the Arrow Manufacturing Company? A. Then, at a meeting of the stockholders of the Hart and Hegeman Manufacturing Company, held on October 1—

Q. That is Exhibit Number 23? A. Exhibit Number 23. The recommendation of the Board of Directors for a plan of organization of the holding company was approved, and the Board of Directors were authorized to approve further details of the plan from time to time, as may be required.

(There was a discussion off the record.)

904 *Samuel P. Williams—Direct.*

Q. I will ask you to identify these papers. Maybe They will help us. A. I identify this paper as a certificate of incorporation of Arrow-Hart and Hegeman, Incorporated, filed October 6, with the Secretary of State.

Q. This is a copy?

Mr. Gross: A certified copy.

A. Yes, a certified copy?

Q. And your name appears as one of the incor-
905 porators? A. Yes.

Mr. Haycraft: I offer that paper in evience.

Examiner Reeves: This document, consisting of three pages, will be received in evidence as Commission's Exhibit Number 31.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 31".)

Q. What is the next paper that you have there? A. This is a certified copy of the certificate of organization of Arrow-Hart and Hegeman, Incor-
906 porated, filed in the office of the Secretary of State October 6, 1927.

Mr. Haycraft: I offer that paper in evidence.

Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 32.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 32".)

(A short recess was taken.

907

Q. Mr. Williams, what book do you have there in your possession now? A. I have the official minutes of Arrow-Hart and Hegeman, Incorporated.

Q. And when was the first meeting held, according to that record of the incorporators and subscribers of that concern? A. It was held October 6, 1927.

Q. Is this a copy of the minutes of the first meeting (handing a paper to the witness)? A. Yes, sir.

Q. Do you know whether that is a correct copy? Was it read back? A. It might have been read back, but I am not responsible for that.

908

Mr. Gross: I will ask Miss Shea.

(There was a discussion off the record.)

Mr. Hayeraft: I offer the copy in evidence, it being understood that it is a correct copy of the original minutes.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 33.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 33".)

909

Mr. Gross: No, they did not read it back. Why don't you just offer it now, and we will have it read back later?

Mr. Hayeraft: Yes.

(There was a discussion off the record.)

Q. What is this paper which I hand you now? A. This is the minutes of the first meeting of the Board of Directors of Arrow-Hart and Hegeman, Incorporated, held on October 6, 1927, at 10:15 a. m.

910 *Samuel P. Williams—Direct.*

Q. This meeting was held fifteen minutes after the meeting of the incorporators and subscribers, which is Commission's Exhibit Number 33? A. Yes.

Mr. Haycraft: I offer these minutes in evidence.

Examiner Reeves: This document, consisting of three pages, is received in evidence as Commission's Exhibit Number 34.

(The document referred to was received in
911 evidence and marked "Commission's Exhibit Number 34".)

Q. Now, the next meeting, which was held in sequence, was the meeting of the stockholders on October 6, 1927, at 10:45 a. m.? A. Yes. I so identify it.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document is received in evidence as Commission's Exhibit Number 35.

(The document referred to was thereupon received in evidence and marked "Commission's
912 Exhibit Number 35".)

Q. And the next meeting was a meeting of the directors of the Arrow-Hart and Hegeman, Incorporated, on October 10, 1927, at ten a. m.; is that the next meeting? A. Yes, sir.

Q. Is this a copy of the minutes of that meeting? A. Yes, sir.

Mr. Haycraft: All right. I offer that in evidence.

Examiner Reeves: This document, consisting of three pages, is received in evidence as Commission's Exhibit Number 36.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 36".)

Q. Now I ask you to identify this paper. A. I identify this paper as the minutes of the stockholders meeting of Arrow-Hart and Hegeman, Incorporated, held October 10, 1927, at 10:30 o'clock.

(There was a discussion off the record.) 914

Mr. Haycraft: I offer this in evidence.

Examiner Reeves: This document is received in evidence as Commission's Exhibit Number 37.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 37".)

Q. I notice on Commission's Exhibit Number 34 that the Phoenix State Bank and Trust Company is designated as the transfer agent of the corporation in charge of the transfer of the stock. A. They were the transfer agents, yes, sir. 915

Q. I ask you to identify this paper which I hand you now. A. This is a list of the original common stockholders of Arrow-Hart & Hegeman, Incorporated, on October 6-10, 1927.

Mr. Cross: Certified by the—

A. (Continuing) —certified by the transfer agent, the Phoenix State Bank and Trust Company.

916 *Samuel P. Williams—Direct.*

Q. Can you testify as to the individuals on that exhibit that were stockholders of the Hart & Hegeman Corporation and received the stock of the old respondent in exchange for the stock of that corporation? Can you indicate as to that? A. As to whether they were?

Q. Yes, which ones were. A. As far as I know, they all were.

Q. Would that correspond to Schedule B attached to the agreement— A. Except in the—

Q. —Commission's Exhibit Number 10. A. It is
917 a combination of A and B, except as to the number of shares.

Q. What is the difference in the number of shares? A. The par value of the Arrow-Hart & Hegeman, Incorporated, was ten dollars, and that of the former companies had been twenty-five dollars. That is not the only difference. If I could only think out—

Q. Well, Mr. Williams, so far as that is concerned, the paper which was just identified is a complete list of the individuals who received stock of Arrow-Hart & Hegeman, Incorporated, at the time it was organized? A. Yes, sir.

918

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 38.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 38".)

(There was a discussion off the record.)

Q. Mr. Williams, do you have any further explanation of the number of shares that were issued to

the individuals named in this Exhibit Number 38? A. Yes, sir, I have. Speaking, for example, of the Hart & Hegeman Manufacturing Company stockholders, the same condition would exist as with the Arrow Electric Company. The original schedule of common stock of the Hart & Hegeman Manufacturing Company stockholders consisted of a total of eight thousand shares, of twenty-five dollars par value. This was increased to twenty thousand shares by a stock dividend of one and a half shares per each share formerly held. In that holding company the capitalization was arbitrarily, you might say, placed at 200,000, at a par value of ten dollars. 920

Q. You mean the old respondent, by that? A. Yes. Of which the Hart & Hegeman stockholders received in the proportion of forty to sixty or eighty thousand shares; so that the twenty thousand shares of twenty-five dollars par value became represented by eighty thousand shares of ten dollars par value; and those are the shares which are mentioned on this exhibit.

Q. Exhibit Number 38? A. Yes.

(There was a discussion off the record.)

Q. The number of directors of the old respondent were how many? Do you remember. A. I think it was nine. 921

Q. How were they divided? A. They were— Do you want the names?

Q. The companies. Whether they came from the Arrow organization or the Hart & Hegeman organization. A. There were two from the Arrow organization, and two from the Hart and Hegeman organization, and five from financial institutions.

922 *Samuel P. Williams—Direct.*

Q. Did you continue after October 10, 1927, as president of the Hart & Hegeman Manufacturing Company? A. Yes.

Q. Did you hold any office in the holding company, Arrow-Hart & Hegeman, Incorporated, the old respondent? A. Yes, the position of vice-president.

Q. After October, 1927, did you continue in charge of the business affairs of the Hart & Hegeman Manufacturing Company? A. Yes, sir.

Q. Who was president of the holding company?
923 A. Mr. Grier.

Q. What, if anything, did he have to do with the business of the Hart & Hegeman Manufacturing Company after October, 1927? A. He acted in an advisory capacity.

Q. What do you mean by that? A. Well, I might say that he interested himself to improve our manufacturing conditions and assistants, and gave us that experience which he had along those lines.

Q. Did Mr. Guett continue as your engineer? A. Yes.

Q. Did Mr. Everest continue as your sales manager? A. Yes, sir.

924 Q. What changes were made with respect to the Paiste organization in Philadelphia, if any? A. The manufacturing in Philadelphia was discontinued.

Q. When? A. According to my recollection, early in the fall of that year.

Q. 1927 or 1928? A. 1927.

Q. Soon after the organization? A. Soon after the formation of the old respondent, and the plant was closed as a manufacturing plant, and its machinery and products were removed to the Arrow plant.

925

Q. Here in Hartford? A. Yes, sir.

Q. After that plant was dismantled what did you do with it? A. It remained unoccupied, and was leased to various tenants.

Q. What became of Mr. Paiste? A. Mr. Paiste retired from business.

Q. How many men did he have employed in the manufacturing plant, approximately? A. Well, I suppose approximately about two or three hundred.

Q. Did they come over to Hartford after the change—a few? A. Very few.

Q. What about your porcelain plant in New Jersey? A. The operations of the porcelain plant were transferred to the Washington Porcelain Company, that is the Arrow subsidiary, and combined there for greater effectiveness.

926

Q. What did you do with the plant? A. The plant has been rented.

Q. The machinery has been taken out? A. No, not altogether. The machinery necessary to operate the company as a tile plant was left there.

Q. I ask you to identify this paper.

Mr. Gross: What is the date?

Mr. Haycraft: January 5, 1928.

927

A. This is a copy of the minutes of a meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held January 5, 1928.

Mr. Haycraft: I offer it in evidence.

Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 39.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 39".)

928 *Samuel P. Williams—Direct.*

Q. At the time that the holding company was organized, in October, 1927 and in referring to the holding company let the record show that reference is made to the old respondent how were the products of the Hart & Hegeman Manufacturing Company distributed and sold to the trade? A. The what we call "shelf goods", or strictly wiring devices, were sold to our jobbers, our wholesalers.

Q. Will you describe which you term shelf goods? A. Yes. The flush switches for control of lighting
929 circuits, flush receptacles for receiving attachment plugs, the attachment plugs themselves; sockets, both shell and candle, and porcelain rosettes, and cutouts.

Q. Are these wiring devices which you mentioned as shelf goods divided into schedules or classifications by the Department of Commerce for census-taking purposes? A. They are.

Q. How are they divided? A. According to my recollection, they are divided as— May I refer to this?

Mr. Gross: Yes, you may refer to anything
930 you wish.

A. The division of lamp sockets and receptacles, of which the subdivision is brass shell sockets and receptacles, porcelain sockets and receptacles, miniature and candelabra sockets.

Q. Does that have a letter or some designation? A. They do with us, but not with the government. We call that schedule B. Next, the government has snap switches. That includes flush, surface, and pendent. That would be our schedule S.

The next schedule would be attachment plug caps.

931

The next would be convenience outlets.

Q. Do you have a separate letter? A. No, those would be our schedule P.

The next is face plates, which would be included in our schedule H.

The next is miscellaneous.

Q. Under miscellaneous what would you include? A. I think most of that would go into our schedule H.

Q. The reason I want to get this at this time is because in future testimony we will probably refer to certain schedules.

932

(There was a discussion off the record.)

The Witness: This paper which I have in my hand is a classification of devices by schedules, as used in our statistical work and sales.

Q. And not in your catalogue? A. Yes, but it may not correspond exactly, but approximately.

Mr. Hayeraft: For the purpose of future reference, I would like to offer that in evidence at this time.

Examiner Reeves: This document is received in evidence as Commission's Exhibit Number 40.

933

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 40".)

Q. Here in Hartford did you make any change in your factories located here after October, 1927? A. We made a great many minor changes, looking to bring about a greater efficiency, yes, and greater economy.

934 *Samuel P. Williams—Direct.*

Q. Will you name some of them, and give the approximate time as best you can—the changes which took place after the first.

Mr. Gross: You have fifteen months of the old respondent's time in there?

Mr. Haycraft: Yes.

A. I would say that naturally the greatest change came about at the plant of the Arrow Company, because they absorbed the manufacturing process of the Paiste Company, which was a very, very large
935 undertaking, and therein the greatest economies came about. That was done during the early part of this period. At the Hart & Hegeman plant a number of changes were promoted and suggested at that time, some of which took effect, and others we have been carrying on since. It is difficult for me to say when and what was done, but we immediately began to organize for the best efficiency.

Q. At that time, in October, 1927, where did you have sales offices other than here in Hartford? A. In Chicago, New York, Philadelphia, and Boston.

Q. How about Atlanta? A. We had a commission agent, as I recall it, in Atlanta.

936 Q. Denver? A. Also a commission agent.

Q. Dallas? A. Commission agent.

Q. San Francisco? A. A commission agent.

Q. What was the arrangement that you had with these commission agents? A. You mean as to the rate?

Q. How were they handling goods? A. They received a commission of five to seven and a half per cent., according to the type of material, and so forth, on all that was sold in that territory.

Q. On the volume of sales? A. On the volume of sales.

Q. They covered the territory with salesmen? A. Yes, sir, their own salesmen.

Q. In the New York office, how many salesmen—Did you have a sales manager in charge there? A. Yes.

Q. Who was he at the time? A. A. F. Wilson.

Q. How many men did he have selling? A. Five or six.

Q. Did he continue in that office throughout that entire period? A. Yes.

938

Q. The same number of salesmen covering the territory? A. Yes.

Q. How about Boston? A. That was an error. We had a commission agent at that time in Boston.

Q. Who was the commission agent? A. Albert Mann.

Q. Did you ever have a branch office? A. Shortly afterward we did, yes. Immediately afterward we changed from a commission agent to our own representative.

Q. Who was that? A. J. W. Saladine.

Q. In Chicago? A. The name of our manager?

Q. Yes, sir. A. A. E. Lubeck.

939

Q. He is still your sales representative? A. Yes.

Q. How many salesmen did he have under him? A. Six or seven.

Q. You say he moved his office to Detroit? A. Yes.

Q. Covering the same territory there? A. Yes, in the main. He does not have quite as large a territory to look after as he did.

Q. Has he got the same number of salesmen? A. Yes, sir.

940 Q. And the Philadelphia office? A. Philadelphia was under the management of J. W. Alexander.

Q. At that time? A. Yes, sir.

Q. How many salesmen did he have? A. At that time he had two or three,—possibly three.

Q. Is he still in charge there? A. Yes, sir.

Q. Does he still have the same number of men? A. Yes, he has somewhat more.

Q. At Dallas? Who was your commission merchant there? A. His name was R. S. Wakefield.

941 Q. Has there been any change there? A. We discontinued that type of representation.

Q. When did you do that? A. I think it was in 1930.

Q. That would be true of your Atlanta, Denver, and San Francisco arrangement? A. The commission arrangement in Atlanta was discontinued earlier. San Francisco we still have, and also Denver.

Q. Who was your agent in San Francisco? A. Garnett, Young & Co.

Q. And Denver? A. Denver, A. E. Bacon.

Q. They have continued, have they? A. Yes, sir. Excuse me, A. E. Bacon is the present representa-

942 tive on a commission basis. The representative at the time the respondent was formed had a different name. I can't recall it.

Q. You can refer to your books. A. Do you wish me to refer to the books?

Q. Yes, I wish you would. A. The name of the Denver commission agent was R. F. Whitmore.

Q. And it is now Mr. Bacon? A. It is now A. E. Bacon.

Q. When was that change made? A. It was made either late in 1929 or early in 1930.

Q. And did you give me the Atlanta commission agent? A. The name was Clark Broward.

Q. He was discontinued in 1927 or 1928? A. In 1928, I think.

Q. San Francisco was Garnett, Young & Co., and still is? A. Yes.

Q. When you discontinued Broward at Atlanta, how did you cover that territory? A. We put our own representative there.

Q. And who is he? A. His name is Paul Ramsey.

944 (There was a discussion off the record.)

Q. For the sake of clarity in the record, refer back to Boston, in October, 1927. Did you say Albert Mann was your commission representative there? A. Yes, sir.

Q. And when was that office made a branch office? A. I think very close to that time.

Q. Do you have any way of fixing it definitely? A. By reference to our records I can.

Mr. Gross: Do it.

(There was a discussion off the record.)

945

A. That change was made on January 1, 1929.

Q. You mean Boston? A. Boston, yes, sir.

Q. In other words, Mann continued all during the balance of 1927 and 1928? A. Yes, sir.

Q. Now, at Philadelphia. A. Alexander continued.

Q. Through that fifteen months' period until January, 1929? A. Yes, sir; and he is still there.

Q. In Chicago Lubeck continued? A. Yes, sir.

946 *Samuel P. Williams—Direct.*

Q. And in San Francisco Garnett, Young & Co.? A. Continued; yes, sir.

Q. Atlanta, Broward went out in 1928 and your own man went in, Paul Ramsey? A. I think I had better refer to these.

(There was a discussion off the record.)

A. I wasn't so familiar with that. There were no changes in our field representatives prior to January 1, 1929.

947 Q. What happened to Broward? A. He was dropped because of his inefficiency.

Q. But it was in 1929; it was not in 1928? A. No, it had been in 1928; in fact, he wasn't representing us at the time of the old respondent in that territory. We were running it ourselves.

Q. Ramsey was there? A. No, it was run out of Philadelphia as a temporary expediency.

Q. And you continued it out of Philadelphia until when? A. Considerably later. I could not say just when.

By Mr. Gross:

948 Q. Until after January 1, 1929? A. Oh, yes, considerably.

By Mr. Brown:

Q. Might I ask: You were running that territory out of Philadelphia all during the period of the holding company, the old respondent? A. Yes.

(There was a discussion off the record.)

949

BY MR. HAYCRAFT:

Q. Can you, by consulting your records, or otherwise, testify as to the number of employees in your sales department in October, 1927, at the time the holding company was organized? A. I can by referring to these records.

Q. What, if any, changes were made in the fifteen months' period that we are talking about? If you can refresh your recollection of that, I wish you would do it, so I can get it in.

(There was a discussion off the record.) 950

Q. I ask you to identify this paper. A. This paper, dated October 10, 1927, gives the names of Edward R. Grier and Samuel P. Williams as subscribers to shares of capital stock of Arrow-Hart & Hegeman, Incorporated.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 41.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 41.") 951

Q. I will ask you to identify this paper, which I hand you now. A. This is a memorandum dated November 9, 1928.

Q. The first sheet is a rough draft, and the second copy is a corrected copy, is that correct? A. Yes, sir.

Q. Who prepared it? A. It was prepared by counsel for publication in the Hartford papers,

announcing the vote of the Board of Directors to recommend to the stockholders the dissolution of Arrow-Hart & Hegeman, Incorporated.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 42.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 42.")

953 Q. I ask you to identify this paper, which I hand you now. A. This is a copy of the minutes of a special meeting of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 10, 1928.

Mr. Haycraft: That is offered in evidence.

Examiner Reeves: This document, consisting of two pages, is received in evidence as Commission's Exhibit Number 43.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 43.")

954 Q. The Exhibit 42 which you have just identified, is a press notice which was authorized by your counsel to be published? A. Yes, sir.

Q. With respect to the action of the meeting which you have just identified as Commission's Exhibit Number 43, is that correct? A. Yes, sir.

Q. I ask you to identify this sheaf of papers. A. Will these be introduced as one exhibit?

Q. Well, shouldn't they? A. Yes, I think so. I thought I would ask you. The first is a letter from

E. R. Grier, president, and Samuel P. Williams, vice-president, to stockholders of Arrow-Hart & Hegeman, Incorporated, dated November 10, 1928.

The second is a notice signed by B. C. Perkins, secretary, dated November 10, of a meeting of the stockholders to be held December 10, 1928.

Next is a form of proxy sent, which was also enclosed with the first letter.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document, consisting of three pages, is received in evidence as Commission's Exhibit Number 44. 956

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 44.")

Q. I will ask you to identify this paper, which I hand you now. A. I identify this as a copy of the minutes of the Board of Directors of Arrow-Hart & Hegeman, Incorporated, held November 30, 1928.

Mr. Haycraft: I will offer that in evidence.

Examiner Reeves: This document, consisting of three pages, is received in evidence as Commission's Exhibit Number 45. 957

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 45.")

Q. I will ask you to identify this paper. A. Page 1 is a letter of Edward R. Grier, president, and Samuel P. Williams, vice-president, dated December 1, 1928, to stockholders of Arrow-Hart & Hegeman, Incorporated. Sheet two is the call of the meeting by B. C. Perkins, secretary—the stockholders' meeting—to be held December 6, 1928.

958 *Samuel P. Williams—Direct.*

The third is a form of power of attorney, consent, and proxy, enclosed with the letter.

Examiner Reeves: Are you offering this?

Mr. Haycraft: Yes.

Examiner Reeves: This document, described by the witness, consisting of three pages, is received in evidence as Commission's Exhibit Number 46.

(The document refererd to was thereupon received in evidence and marked "Commis-

959 sion's Exhibit Number 46.")

Q. What is this paper? A. This is a notice of meeting, dated December 8, 1928, calling the meeting of the Board of Directors of the Hart & Hegeman Manufacturing Company, to be held December 11, 1928. It is also a copy of the minutes of the meeting of the Board of Directors of the Hart & Hegeman Manufacturing Company, held December 11, 1928.

By Mr. Gross:

Q. The notice is dated— A. Dated December 8,

960 Q. And minutes of meeting of the Board of Directors of— A. December 11.

Mr. Gross: I offer an objection, your Honor, to the admission of this evidence of a meeting of the Board of Directors of the Hart & Hegeman Manufacturing Company, as it relates to something which is entirely outside the scope of the Federal Trade Commission, namely, the formation of the new corporation, of which the

961

old respondent, namely, the Arrow-Hart & Hegeman, Incorporated, was not a party to or in any way connected with, and it relates to a matter that is not pertinent to the complaint issued by the Federal Trade Commission originally against the old respondent, and, therefore, I say it is irrelevant and immaterial to the issue raised by that complaint, and the matters therein contained are outside the jurisdiction of the Honorable Federal Trade Commission.

962

Mr. Haycraft: Of course, I understand that in going into this phase of the case, that it was covered by the supplemental complaint.

Examiner Reeves: The objection will be taken under advisement and a ruling thereon announced. In the meantime, I will read the paper.

(There was a discussion off the record.)

963

Mr. Gross: I assume, Mr. Haycraft, that with the consent of the Examiner, and by agreement with you, if my objection is once made, which is the same as raised in the motion to dismiss, that that may be taken as applying to all similar evidence, without restating the objection each time.

Examiner Reeves: I imagine you had better make a general objection on the record to affect this particular point that you are raising at all future points.

Mr. Gross: I therefore amplify the objection which I made to this particular piece of evidence with the understanding that I make the same objection to all evidence which in any way relates to the organization of what we know

as the new respondent, The Arrow-Hart & Hegeman Electric Company, and to all steps applying to its formation, and to its operation and to the conduct of the business under the new, merged, or consolidated company, which we know as the new respondent, it simply being my purpose that this objection may apply when your Honor comes to rule on evidence of the same nature.

Examiner Reeves: That will be kept in mind.

Mr. Gross: And my rights are preserved by
965 making my objection once, and the objection when it comes, if it is overruled, I have by this statement the benefit of an exception, so I have my rights before the honorable Federal Trade Commission. I suppose an exception is noted when the ruling is made.

Examiner Reeves: It will be so noted and so ordered.

Mr. Gross: Will that be marked?

Examiner Reeves: It is marked for identification, and the objection to the admission is taken under advisement.

It may be marked for identification as Com-
966 mission's Exhibit Number 47.

(The paper referred to was thereupon marked "Commission's Exhibit Number 47 for Identification".)

(There was a discussion off the record.)

Q. I call your attention to what purports to be the minutes of a special meeting of Arrow-Hart & Hegeman, Incorporated, the old respondent, dated December 6, 1928, which may also be found as part

967

of Exhibit C of the respondent's answer in this case to the supplemental complaint. A. I so identify it.

Q. And that is the meeting of the stockholders of the old respondent, which was held pursuant to the notice dated December 1, 1926? A. Yes.

Mr. Haycraft: I offer in evidence these minutes of the meeting of stockholders of Arrow-Hart & Hegeman, Incorporated, held on December 6, 1928, as has been described, and asked that it be marked Exhibit Number 48.

968

Mr. Gross: I will object to that.

Examiner Reeves: The objection of counsel for the respondent is taken under advisement.

(The paper referred to was marked "Commission's Exhibit Number 48 for Identification".)

Q. I call your attention to what purports to be the minutes of a special meeting of Arrow-Hart & Hegeman, Incorporated, held December 10, 1928, as a part of this same Exhibit C, attached to the respondent's answer to the supplemental complaint, and ask that it be marked Exhibit 49 for identification.

969

Examiner Reeves: This document may be marked as Commission's Exhibit Number 49 for identification.

(The paper referred to was thereupon marked "Commission's Exhibit Number 49 for identification.")

Mr. Haycraft: I offer it in evidence.

Mr. Gross: The same objection.

970 *Samuel P. Williams—Direct.*

Examiner Reeves: The objection is taken under advisement.

(There was a discussion off the record.)

Q. I ask you to identify this paper. A. I identify this paper, Mr. Hayeraft, as a non-negotiable receipt, issued December 7, 1928, by the Phoenix State Bank and Trust Company, as transfer agent of Arrow-Hart & Hegeman, Incorporated, of the Arrow-Manufacturing Company and of H. and H. Electric Company.

971 Q. What was the purpose of that receipt?

Mr. Gross: I object to that on the ground that the paper speaks for itself, rather than take it into the record.

Mr. Hayeraft: All right. I will offer it in evidence.

Examiner Reeves: Are there any objections?

Mr. Gross: I think these all ought to go in under the same objection.

Examiner Reeves: The objection is taken under advisement. In the meantime it may be marked for identification as Commission's Exhibit Number 50.

972 (The paper referred to was thereupon marked "Commission's Exhibit Number 50 for Identification".)

Q. What is that paper which I hand you now? A. This is a copy of the agreement of consolidation or merger between the Arrow Electric Company, the Hart & Hegeman Manufacturing Company, the Arrow Manufacturing Company, and the H. and H. Electric Company.

Q. What was your official position at that time with these respondent companies? A. I was president of the Hart and Hegeman Manufacturing Company, and president of the H. and H. Electric Company.

Q. That was the only position that you held in these companies? A. Yes, sir.

Mr. Hayeraft: I offer it in evidence.

Mr. Gross: I object to this document, if your Honor please, on the ground that it is an agreement between four companies, none of which 974
has any part to this proceeding.

Examiner Reeves: These objections will be taken under advisement. In the meantime the document may be marked for identification as Commission's Exhibit Number 51.

(The paper referred to was thereupon marked "Commission's Exhibit Number 51 for Identification".)

Mr. Gross: Do you want a printed copy instead of that?

(There was a discussion off the record.)

Q. I call your attention, Mr. Williams, to Commission's Exhibit Number 44, the joint letter from 975
Mr. Grier and yourself to the stockholders of the old respondent, that you formerly identified here, dated November 10, 1928, and ask you whether or not the agreement which you just identified, Commission's Exhibit Number 51 for Identification, was an agreement which was entered into pursuant to the plan proposed in Commission's Exhibit Number 44?

976 *Samuel P. Williams—Direct.*

Mr. Gross: I think that calls for a conclusion of law, Mr. Examiner.

Mr. Haycraft: No, Mr. Examiner. This man is a party to both. He can certainly tell whether he was acting pursuant to the idea.

(There was a discussion off the record.)

Q. I would like to change my question to read Exhibit 46, instead of Exhibit 44, which is a letter from Mr. Williams and Mr. Grier to the stockholders, under date of December 1, 1928, and refers to
977 the "Outline of plan of reorganization". Do you know whether or not this agreement, Exhibit Number 51 for Identification, is the agreement contemplated in the plan outlined in Exhibit 46? A. I believe it to be such.

Mr. Gross: I object to that as calling for a conclusion of law.

Examiner Reeves: The objection is overruled.

Mr. Gross: Exception.

Q. Will you identify these papers?

Mr. Gross: I would like to have them sep-
978 arately identified.

Mr. Haycraft: All right.

A. This letter (indicating) is from Edward R. Grier, president of the Arrow Electric Company, and Samuel P. Williams, president of the Hart and Hegeman Manufacturing Company, dated December 11, 1928, to the preferred stockholders of the Arrow Electric Company to the preferred stockholders of the Hart & Hegeman Manufacturing Company.

Mr. Haycraft: I offer it in evidence.

Mr. Gross: I object to it on the same ground.

Examiner Reeves: The objection is taken under advisement, and in the meantime the paper may be marked for identification as Commission's Exhibit Number 52.

(The paper referred to was thereupon marked "Commission's Exhibit Number 52 for Identification".)

The Witness: This paper (indicating) is a notice dated December 11, 1928, signed by Robert C. Buell, secretary, of the meeting of pre- 980
ferred and common stockholders of the Hart & Hegeman Manufacturing Company, to be held December 31, 1928. The next is a proxy for that meeting.

By Mr. Gross:

Q. May I just notice what it says on the first line? A proxy for what? A. For the holders of preferred stock.

Mr. Haycraft: I offer the two papers in evidence as one exhibit.

Examiner Reeves: Are there any objections? 981

Mr. Gross: The same objection, if your Honor please.

Examiner Reeves: These objections are taken under advisement, and in the meantime, the two documents described by the witness may be marked for identification as Commission's Exhibit Number 53.

(The two documents referred to were thereupon marked "Commission's Exhibit Number 53 for Identification".)

982 *Samuel P. Williams—Direct.*

By Mr. Haycraft:

Q. I ask you to identify this paper. A. This is a notice signed by E. Bosworth Grier, assistant secretary, and dated December 11, 1928, calling a meeting of the preferred and common stockholders of the Arrow Electric Company, to be held December 31, 1928. The next is a proxy for the same meeting for the use of preferred stockholders of the Arrow Electric Company.

983 Mr. Haycraft: I offer that in evidence.

Mr. Gross: The same objection.

Examiner Reeves: The objection is taken under advisement, and in the meantime the document described by the witness may be marked for identification as Commission's Exhibit Number 54.

(The document referred to was thereupon marked "Commission's Exhibit Number 54 for Identification".)

Q. I ask you to identify this paper. A. This is a call for a meeting of stockholders of the Arrow Manufacturing Company, dated December 11, 1928,
984 said meeting to be held December 31, 1928, signed by Harvey C. Pond, secretary. The second is a notice of a meeting of the stockholders of the H. & H. Electric Company, dated December 11, 1928, signed by John R. Cook, secretary, said meeting to be held December 31, 1928.

Mr. Haycraft: I offer this in evidence.

Mr. Gross: I make the same objection.

Examiner Reeves: The objections are taken under advisement, and in the meantime the two

documents last described by the witness may be marked for identification as "Commission's Exhibit Number 55.

(The two documents referred to were thereupon marked "Commission's Exhibit Number 55 for Identification".)

Q. I show you what purports to be the notice of a special meeting of the stockholders of the Hart & Hegeman Manufacturing Company, held on December 31, 1928, as part of Exhibit F, attached to the respondent's answer in this proceeding to the supplemental complaint, and ask if you can identify 986
that document. A. I do identify it as such.

Mr. Haycraft: I offer it in evidence.

Mr. Gross: The minutes of the special meeting of stockholders of the Hart & Hegeman Manufacturing Company of December 31, 1928?

Mr. Haycraft: That is the one. I offer it in evidence.

Examiner Reeves: Are there any objections?

Mr. Gross: I object, if your Honor please, on the ground that this is a document which has nothing to do with the old respondent. 987

Examiner Reeves: The objection is taken under advisement, and in the meantime the document may be marked for identification as Commission's Exhibit Number 56.

(The document referred to was thereupon marked "Commission's Exhibit Number 56 for Identification".)

Q. Can you identify this paper? A. I identify this paper as a certificate filed in the office of the Secretary of State and approved December 10, 1928.

988 *Samuel P. Williams—Direct.*

Q. What is the title of it? A. There is no title.

Mr. Gross: In law it is called a preliminary certificate of dissolution.

Q. Did you prepare the original paper? A. I did not. It was prepared by counsel, certifying that the Board of Directors of Arrow-Hart & Hegeman, Incorporated, had voted to terminate its corporate existence. They voted on November 10, 1928, to terminate its corporate existence.

989 Q. Your name appears there as one of the signers? A. That is perfectly true.

Mr. Haycraft: I offer the paper in evidence.

Mr. Gross: No objection.

Examiner Reeves: This may be received in evidence as Commission's Exhibit Number 57.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 57".)

Q. Will you identify this paper? A. I identify this paper as the final certificate of dissolution of Arrow-Hart & Hegeman, Incorporated, filed April
990 11, 1929, in the office of the Secretary of State, Hartford, and approved by the secretary.

Mr. Haycraft: I offer that in evidence.

Mr. Gross: No objection.

Examiner Reeves: This may be received in evidence as Commission's Exhibit Number 58.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 58".)

Q. I ask if you can identify this paper. A. This is a copy of the liquidation meeting—

991

Q. Of the minutes? A. Of the minutes of the liquidation meeting of the trustees of Arrow-Hart & Hegeman, Incorporated, held April 11, 1929.

Mr. Haycraft: I offer that in evidence.

Mr. Gross: No objection.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 59.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 59".)

992

Q. What is this paper which I hand you now? A. This is an unofficial or informal notice to directors who are to serve the Arrow-Hart & Hegeman Electric Company,—

Q. That is the new respondent. A. —of a meeting to be held January 1, 1929.

Q. Did you prepare it? A. I think I did.

Q. What are the other papers? A. Then there is a letter from myself to Arthur P. Day, dated December 26,—

Q. The same year? A. In 1928, transmitting the waiver of a special meeting of the Board of Directors of the Arrow-Hart & Hegeman Electric Company to be held January 1, 1929, and likewise the memorandum last described.

993

Mr. Haycraft: I offer the three papers in evidence.

BY MR. GROSS:

Q. Where was Mr. Day? A. Addressed Arthur P. Day, Saint Augustine, Florida.

994 *Samuel P. Williams Direct.*

By Mr. Haycraft:

Q. Who was he before you addressed that letter to him, or at the time you addressed it?

Mr. Gross: You mean in connection with the proposed agreement?

Mr. Haycraft: Yes, in connection with anything that had to do with this case.

A. What was his official position, you mean?

995 Q. Yes.

Mr. Gross: What he meant, he was to be a director in the new company.

Q. What was he at the time the letter was written?

(There was a discussion off the record.)

A. He was named in the agreement of consolidation or merger as one of the persons who were to be directors.

Q. Was he formerly connected with the Hart & 996 Hegeman Manufacturing Company? A. He was at one time.

Q. He is the same man about whom we have talked before as being elected to take the place of Mr. Morris? A. Yes, and it is my recollection that he resigned.

Mr. Haycraft: I offer the papers in evidence.

Examiner Reeves: Are there any objections?

Mr. Gross: The same objection; it is relating to something outside the jurisdiction of the Commission.

Examiner Reeves: These papers, identified by the witness, may be marked for identification as Commission's Exhibit Number 60.

The objection to their offer in evidence will be taken under advisement.

(The papers referred to were thereupon received in evidence and marked "Commission's Exhibit Number 60 for Identification".)

Q. I ask you to identify this paper. A. I identify this paper as a letter by myself, written January 1, 1929, to Arthur P. Day, at Saint Augustine, Florida. 998

Q. It is a copy of the carbon? A. Yes.

Q. In the second paragraph reference is made to a report prepared by Mr. Grier for the first directors' meeting. Do you have a copy of that report? A. No, sir, I have not. It had been a general talk that the president of any company will deliver to his stockholders, and I thought afterwards— You asked me about it before—and it very likely was the gist of what was later published in our report to the stockholders, January 28, 1929.

Q. I will just attach these two together, if you think that is what it is about. A. It must be about that, I think. 999

Mr. Haycraft: I offer the two documents in evidence.

Mr. Gross: The same objection.

Examiner Reeves: The objections are taken under advisement, and it may be marked for identification as Commission's Exhibit Number 61.

(The papers referred to were thereupon marked "Commission's Exhibit Number 61 for Identification".)

1000 *Samuel P. Williams—Direct.*

Q. I will ask you to identify this paper. A. This is identified as a copy of the minutes of the Board of Directors' meeting of the Arrow-Hart & Hegeman Electric Company, held on January 1, 1929.

Mr. Haycraft: I offer it in evidence.

Mr. Gross: The same objection, on the ground of the jurisdictional points, sir.

Examiner Reeves: The objection is taken under advisement, and the document, consisting of three pages, may be marked for identification as Commission's Exhibit Number 62.

1001

(The document referred to was thereupon marked "Commission's Exhibit Number 62 for Identification".)

Q. I ask you to identify this paper. A. This is a copy of the by-laws of the Arrow-Hart & Hegeman Electric Company.

By Mr. Gross:

Q. Of the new respondent? A. Yes.

By Mr. Haycraft:

1002

Q. When were they adopted? A. They were adopted January 28, 1929, at the first annual meeting of the new respondent.

Q. Will you produce the copy of the minutes of that annual meeting and have it attached to these by-laws? I will offer it as one exhibit.

I offer it as Exhibit Number 63.

Mr. Gross: I object to it on the same ground.

Examiner Reeves: The document may be marked for identification as Commission's Ex-

hibit Number 63, and the objection to its introduction in evidence will be taken under advisement.

(The document referred to was thereupon marked "Commission's Exhibit Number 63 for Identification".)

(The minutes of the annual meeting referred to were later furnished and are now part of Commission's Exhibit Number 63 for Identification.)

Q. I will ask you to identify this paper. A. This is a copy of the minutes of the Board of Directors' 1004
meeting of January 28, 1929, of the Arrow-Hart & Hegeman Electric Company.

Q. The new respondent? A. The new respondent.

BY MR. GROSS:

Q. That is where they elected officers? A. Yes.

Mr. Haycraft: I offer it in evidence.

Mr. Gross: The same objection.

Examiner Reeves: The document identified by the witness may be marked for identification 1005
as Commission's Exhibit Number 64, and the objection to its introduction in evidence is taken under advisement.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 64 for Identification".)

BY MR. HAYCRAFT:

Q. I ask you to identify this paper. A. This is a list of common stockholders of Arrow-Hart & Hegeman, Incorporated.

1006 *Samuel P. Williams—Direct.*

Q. The old respondent? A. The old respondent. That was at the close of business, November 30, 1928.

Q. Prepared by whom? A. Prepared by the Phoenix State Bank and Trust Company.

Q. As official transfer agent? A. Yes.

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Gross: No objection.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 65.

1007

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 65".)

Q. Does the transfer agent now have custody of the cancelled shares of stock? A. No.

Q. What has happened to them? A. They are in the hands of the owners as represented in that list.

Q. Can you explain why that is so? A. That was so arranged on advice of counsel, feeling that the surrender of the shares might involve a question of income tax.

1008

Q. Just what happened, then, to the shares of stock of the old respondent? A. Those remained with the owners.

Q. What were they required to do? A. They were required to bring them to the transfer agent, to be marked with the rubber stamp, showing that they assent to the plan of reorganization.

Q. And the paper that you have before you: Does it contain a true copy of the stamp that was placed on all shares of stock issued by the old respondent? A. It does.

1009

Q. Was there any other reason for having the stock submitted to the transfer agent for stamping with this stamp that you have identified? A. Yes, it was also to cover any stock which might have been pledged for collateral.

Q. Do you mean for the protection of the bank that made the loan? A. For the protection of the bank that made the loan.

Mr. Haycraft: I offer this sheet containing the stamp that the witness has just referred to in his testimony.

1010

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 66.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 66".)

(There was a discussion off the record.)

Mr. Haycraft: I think that is all for tonight.

Examiner Reeves: Will it be agreeable for counsel for the respondent and for the Commission if an adjournment is taken until ten o'clock, daylight saving time, tomorrow?

Mr. Haycraft: That is all right for me.

1011

Mr. Gross: Yes, sir.

Examiner Reeves: The hearing will be adjourned to Tuesday morning, May 26, at ten o'clock A. M., daylight saving time.

(Whereupon, at 4:10 P. M. Eastern Standard Time, an adjournment was taken to Tuesday, May 26, 1931, at ten o'clock A. M. Daylight Saving Time.)

1012 *Samuel P. Williams—Direct.*

Conference room, Arrow-Hart & Hegeman Electric Co., 103 Hawthorne Street, Hartford, Connecticut.

May 26, 1931.

Met pursuant to adjournment, 10 a. m. daylight saving time.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

1013

E. F. HAYCRAFT, attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of GROSS, HYDE AND WILLIAMS, 49 Pearl Street, Hartford, Connecticut, attorney for the respondent.

ARTHUR F. SHIPMAN, of SHIPMAN AND GOODWIN, 15 Lewis Street, Hartford, Connecticut, attorney for the respondent.

1014 PROCEEDINGS.

SAMUEL P. WILLIAMS, resumed.

DIRECT EXAMINATION (Contd.) BY MR. HAYCRAFT:

Q. When the new respondent was formed, what, if any, position did you have in its organization? A. At the time of the formation of the new respondent, my position was that of vice-president of the old respondent.

Q. And then what position did you assume in the new respondent? A. The position of vice-president and treasurer.

Q. The same as you had in the old company? A. Yes, and treasurer.

Q. What were your duties as vice-president in the new respondent? A. In the new respondent?

Q. Yes. A. Under the president I maintained contact with all departments of the business, with no particular specific duties.

Q. Who had charge of the business which had formerly been conducted by the Hart & Hegeman Manufacturing Company—under the old respondent? 1016 A. As far as the sales matters were concerned, that was largely—it was entirely assumed by the sales manager, Mr. Everest, and as regards any general factory duties, they were distributed among other persons.

Q. Could you name the persons you have in mind, and their relative positions assigned to them under the new respondent, after January 1, 1929? A. Mr. Cook became either more active and responsible in respect to the sales end,—in the appliance sales, and Mr. Inch was given full and independent charge of the accounting, and, as I said before, I did not have any considerable contact with the factory at 1017 any time.

Q. Mr. Guett was still in charge? A. Mr. Guett we looked to for the entire mechanical and technical supervision.

Q. By that you mean the entire business of the new respondent? A. Of the entire business.

Q. Not only the Hart & Hegeman division, but also the Arrow? A. Yes, sir.

Q. Did you have anyone similarly in charge of the sales end of the business? A. Yes, sir. Both of those men, Everest and Cook.

1018 *Samuel P. Williams—Direct.*

Q. They are in charge of the sales of the entire business of the new respondent, including the sales that are manufactured by the Hart & Hegeman division as well as by the Arrow division? A. No, Mr. Everest has no connection with the sales of the Arrow division, but only of the sales of those of the Arrow-Hart & Hegeman division.

Q. But Mr. Guett is in charge of all of the factories of the new respondent? A. As mechanical expert, yes.

Q. And who is president of the new respondent?
1019 A. Mr. Edward R. Grier.

Q. He was president of the old respondent also? A. Yes, sir.

Q. And as such is in charge of all the business of the new respondent in an executive capacity? A. In an executive capacity.

Q. And are you his assistant with respect to certain duties relating to all the business, or only that portion which relates to the Hart and Hegeman division? A. Mainly that portion, but not necessarily exclusively so.

Q. Just how is the so-called Hart and Hegeman division separate and distinct from the Arrow? A.
1020 You are speaking of the present time?

Q. Since January, 1929. A. The separation between the two is absolutely complete so far as all sales matters are concerned. They have separate sales managers, a separate staff of salesmen in the field.

Q. Have there been many changes in the personnel or sales managers in the field since January 1, 1929? A. There have been some changes.

Q. Are you able at the present time to furnish us the information I requested yesterday with respect to the changes in personnel during the fifteen

months' period from October 17, 1927, to January 1, 1929? If so, I would prefer if you testify to that now and then add the changes that have been made since January 1, 1929. A. As to the sales organization during the period of the old respondent, the record which I have shows that at the commencement of that period— Do you wish the details in the different territories?

Q. Yes. A. In New York we had one manager and four salesmen operating out of New York City; one salesman operating in the state of New York, and those were the same at the close of the year 1928. 1022

In Chicago territory we had one manager and eight salesmen. Those were also the same at the close of the year 1928.

In Denver and in Texas we had a commission agent.

Q. That is Dallas, Texas, isn't it? A. Yes, sir, Dallas. They were also the same at the close of the period.

In New England we had a commission office in Boston, which remained the same during the period.

In Philadelphia, a manager and three salesmen. During 1928 one salesman was added.

In Canada we had one manager, and during 1928 one salesman was added. 1023

On the Pacific Coast, a commission office, which remained the same during the period.

In Atlanta, two salesmen, and it remained the same during the period.

Q. Now, just a few general questions about that set up. The names that you gave yesterday were correct, weren't they? A. Yes.

Q. On what class of trade were those salesmen, under the branch manager, supposed to call? A.

1024 These men were calling upon contractors, architects, industrial companies, and to some extent upon jobbers of the Hart and Hegeman Manufacturing Company.

Q. In making these calls on architects and contractors, did they do that by themselves or along with salesmen of the jobbers? A. They called upon them by themselves.

Q. Did they attempt to have business—that is, orders to be placed with the Hart & Hegeman Manufacturing Company? A. No, sir, they were call-

1025 ing in a missionary capacity.

Q. Just what did they do in making these calls? A. In the case of the architects they would show samples of our material and undertake to have our materials written into the specifications for the construction of any projects which were on the architects' boards.

Q. How were the orders for such products to be placed? A. We had no control with the placement of orders. If we were fortunate enough to have them specified we had to take the chance that the contractors would use those goods, and would obtain them through his jobber.

1026 Q. He would go to his regular source of supply and demand them? A. Yes.

Q. Did those salesmen also make calls upon manufacturers who might use your devices in their equipment, such as vacuum cleaners, radios, and so on? A. On some occasions it was necessary to send a man to follow up some inquiry, but the majority of that work at that time was done from the Hartford office.

Q. What is the customary procedure in sales of that kind? That is, do you solicit from the manufacturer or does the manufacturer come to see you

1027

and ask if you can produce a certain article? A. A great deal of business is secured that way without any solicitation on our part. Of course, that is not so in all cases. We do solicit business where we hear of any new development which provides for current control. Either we get in contact with that company and make them an offer to design it or produce the thing which will best fit the case.

Q. Is that usually handled from the Hartford office? A. It is very largely direct from Hartford, although we employ at the present time a special staff of salesmen who are qualified technically to handle such matters.

1028

Q. Was that true in that fifteen-month period that I am trying to restrict myself to? A. I was not aware of the fact that you were trying to restrict yourself to that period.

Q. Yes. A. No, it was not true to the extent that it is now.

Q. If I understand your testimony correctly, Mr. Cook had charge of that type of work at that time? A. He did.

Q. The balance of your testimony, however, would apply to that period? A. In the main, I think, yes, sir.

Q. Can you identify this catalog? A. Yes, I identify this as catalog S of the Hart & Hegeman Manufacturing Company.

1029

Q. When was it published? A. It was issued in 1926.

Q. How long was it in force? A. I could not answer that. I could not tell you.

Q. Well, who could? A. The advertising manager of the Hart & Hegeman division, Mr. Peck.

Q. He has been your advertising manager how long? A. Since approximately 1923 or 1924, I should say.

1030 *Samuel P. Williams—Direct.*

Mr. Haycraft: I ask that this be marked for identification.

Examiner Reeves: The catalog referred to by counsel will be marked for identification as Commission's Exhibit Number 67.

(The catalog referred to was thereupon received in evidence and marked "Commission's Exhibit Number 67, for identification.")

(There was a discussion off the record.)

Mr. Gross: I have no objection to that going in.

1031 Examiner Reeves: The catalog marked for identification as Commission's Exhibit Number 67 is received in evidence as Commission's Exhibit Number 67.

(The catalog referred to was thereupon received in evidence and marked "Commission's Exhibit Number 67.")

Q. I ask if you can identify this paper, Mr. Williams. A. This is a list of preferred stockholders of the Hart & Hegeman Manufacturing Company as of October 10, 1927.

Q. That was prepared by whom? A. Prepared by the Hartford National Bank and Trust Com-

1032 pany, transfer agent.

Mr. Haycraft: I offer that in evidence, with that identification.

Examiner Reeves: This will be received in evidence as Commission's Exhibit Number 68.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 68.")

Q. I ask you to identify this paper. A. I identify this as a list of preferred stockholders of the Arrow

1033

Electric Company. That is dated October 10, 1927, and was prepared by the Hartford National Bank and Trust Company, the transfer agent.

Q. And prepared at your request? A. At my order in response to your request, Mr. Haycraft. You can say the same for the first one there.

Mr. Haycraft: Yes. I offer that in evidence also.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit Number 69.

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 69.")

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Q. I ask you to identify this paper. A. This is a list of preferred stockholders of the Hart & Hegeman Manufacturing Company as of December 31, 1928, prepared by the Hartford National Bank and Trust Company, transfer agent, at my order in response to the request of Mr. Haycraft, counsel for the Commission.

Examiner Reeves: This is received in evidence as Commission's Exhibit Number 70.

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(The document referred to was thereupon received in evidence and marked "Commission's Exhibit Number 70.")

Q. I ask the same question with respect to the paper which I now hand you. A. This is a list of preferred stockholders of the Arrow Electric Company as of December 31, 1928, prepared by the Hartford National Bank and Trust Company, transfer agent, at my direction, to comply with the request of Mr. Haycraft, counsel for the Commission.

1036 *Samuel P. Williams—Direct.*

Mr. Haycraft: I offer it in evidence.

Mr. Gross: No objection.

Examiner Reeves: This is received in evidence as Commission's Exhibit Number 71.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 71.")

(There was a discussion off the record.)

Q. As treasurer of the new respondent corporation, I will ask you whether or not the provisions
1037 of the agreement, consolidation, and merger, Commission's Exhibit Number 51 for identification, with respect to the issuance of stock of the new corporation, were carried out? A. Yes, sir, they were.

Q. So that at the time the new corporation came into existence, in January, 1929, its stockholders were all stockholders whose names appear in this proceeding on exhibits?

Mr. Gross: I object to that, if your Honor please, because as a matter of fact, while I am perfectly willing to state that they became such, they did not become by operation of law,
1038 because the respondent's stock did not go into the new respondent. That went through those two little companies. The old respondent's stock was shaken down in the Arrow Manufacturing Company to the H. & H. Electric Company, and they went through, and as a matter of fact, they were the same people, but they would not become so as a matter of law.

The Witness: I can get that for you.

(There was a discussion off the record.)

Q. Now, Mr. Williams, I guess you are ready to tell us what happened in the way of changes in the

1039

sales organization of the new corporation after January 1, 1929, so far as the Hart & Hegeman is concerned. A. I am sorry I have not the information to state that.

Q. Who would be in a position to give that? A. It would probably require some investigation, as we had no records except as we picked them out, but we can have it made up for you.

Mr. Gross: Mr. Pond and Mr. Everest would be the men to do that.

Mr. Haycraft: Yes.

The Witness: Do you want me to get it now?

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Mr. Gross: Have him testify to it rather than Mr. Williams.

Mr. Haycraft: Yes.

The Witness: Shall I speak to them now?

Mr. Haycraft: Yes.

Examiner Reeves: We will take a recess.

(A short recess was taken.)

Mr. Haycraft: That is all now.

Examiner Reeves: You may cross-examine the witness.

CROSS EXAMINATION BY MR. GROSS:

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Q. Mr. Williams, in your direct testimony, in speaking of some of the economies that were effected during the period of the old respondent, that is, during the fifteen months from October, 1927, to December 31, 1928, you testified that the Paiste plant, in Philadelphia, was discontinued, and the equipment and products were brought over to the Arrow plant in Hartford. Was that a purchase by Arrow from Paiste? A. Yes, sir.

Q. Paid for by Arrow to Paiste? A. Yes.

1042 Q. What did they buy? A. They bought the machinery and the equipment and the inventory—merchandise inventory.

Q. Goods in the process of manufacture, and so forth? A. Yes.

Q. And after that what was done? Whether or not then the Arrow made for Hart & Hegeman the sockets which Paiste had previously made? A. Yes, the sockets and all other materials, and sold them to the Hart & Hegeman Manufacturing Company.

Q. That was then a sale from the Arrow Electric
1043 Company to the Hart & Hegeman Manufacturing Company and charged to them accordingly? A. Yes, sir.

Q. During that same period of fifteen months, whether other economies were made, for instance, in connection with the machinery for making plates. If so, how did that operate between the Hart & Hegeman Manufacturing Company and the Arrow Electric Company? A. On account of equipment, the special automatic machinery which Hart & Hegeman had for that type of work, the Hart & Hegeman Manufacturing Company manufactured plates for the Arrow Electric Company, which they bought from Hart & Hegeman.

1044 Q. And paid for as though they were outside concerns? A. Yes, sir, that is true.

Q. In each case it was a commercial transaction in the usual course of business between the two companies? A. And strictly so, and accounted for.

Q. Now, whether or not the same economies were effected by the use of the automatic screw machines? A. Yes, there were such economies affected.

Q. Whether Arrow made parts on the automatic screw machine, which they sold to Hart & Hegeman? A. They did. There were times when our

capacities were insufficient, and we bought automatic screw parts from the Arrow Electric Company.

Q. In other words,— A. (Continuing) and we also bought a certain amount of their equipment and made our own.

Q. Whether or not these effected economies in manufacture for the benefit of the respective companies involved? A. In each case they effected very material economies.

Q. Whether or not during that same period of fifteen months the Arrow Company for a consideration allowed the Hart & Hegeman Manufacturing Company the benefit of their expert men in the statistical and planning departments and paid for it? A. Yes, the Arrow Company furnished to Hart & Hegeman some of their particularly qualified employees, whose salaries were paid by Hart & Hegeman, to assist the latter company in improving their statistical and their production system.

Q. Whether or not Mr. Monroe Guett, the inventive genius of the Hart & Hegeman Manufacturing Company, was during that same period available for conference and advice to the men of the Arrow Company? A. Yes, and he was, very effectively.

Q. Whether or not to a certain extent the same transaction as took place when the Arrow bought the Paiste equipment, was involved when the Trenton works of the Hart & Hegeman Manufacturing Company were closed down, and the manufacture of porcelain parts was transferred to the Washington, New Jersey, plant of the subsidiary of Arrow Company? A. Yes, it was a similar transaction. Such machinery as was used, and also raw material, and parts, and so forth, were bought by

1048 *Samuel P. Williams—Cross.*

the Washington Porcelain Company, and it therefore manufactured porcelain for the Hart & Hegeman Manufacturing Company and bill such materials to it.

Q. When was the Hart & Hegeman Company first organized and where? A. It was first organized in Kansas City as a partnership between Mr. Hart and Mr. Hegeman, in 1890.

Q. Was Mr. Guett connected with them in Kansas City? A. He was their first employee.

Q. And he has been connected with them since? He came to Hartford and has been with them since?
1049 A. Yes, continuously.

Q. Will you give a brief history of the company and the changes by which the company finally came under the management of the Mr. Shiras Morris? A. In 1891, the partnership moved to Hartford and was incorporated under the Connecticut laws. Shortly after that Mr. Albert H. Peas bought an interest in the corporation, and he continued there after the retirement of Mr. Hegeman, and also, after the retirement of Mr. Hart, Mr. Peas became president, and continued as such until, I think, in the year 1909, when he died. Meanwhile, Shiras
1050 Morris had been employed, about the year 1896 or 1897.

Q. After he graduated from Trinity College in Hartford? A. After he graduated from Trinity College in Hartford, and he became Mr. Peas' right-hand man.

Q. After Mr. Peas died did he become the largest owner of the company? A. He acquired the majority of the stock of the company after Mr. Peas' death, and became president of the company.

Q. And at the time of his death, I think it has been testified to, either he or he with his family

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and the trust created by him, the Hartford Connecticut Trust Company, controlled the majority of the stock of the company? A. They did.

Q. Will you give something of the type of Mr. Shiras Morris—as the dominant man in this company, as he operated the company—the nature of his operating it? A. Mr. Morris was a very powerful type of man. He had a very broad acquaintance in the industry, and he kept very close control of the entire operations of the Hart & Hegeman Manufacturing Company, within his own hands, personally.

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Q. The old type of a one-man's concern? A. Yes, I think you would call it that.

Q. Everybody reported to him, and he had his fingers on the pulse of everything? A. Yes.

Q. When did you go with the company? A. In September, 1918.

Q. And you were Mr. Morris's right-hand man in a confidential capacity, particularly along the line of sales and finances. A. I believe that I was, yes, sir.

Q. Mr. Morris died on February 2, 1927, and you testified, in response to questions of counsel for the Commission, that in the early part of July, 1927, Mr. Grier first took up with you the negotiations which finally resulted in the holding company. Will you tell us whether or not between the period from February 2, 1927, when Mr. Shiras Morris died, and early in July, when Mr. Grier came to you, there were other negotiations looking to the sale of the company or to other forms of corporate reorganization of the company.

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Mr. Haycraft: That is objected to as incompetent, irrelevant, and immaterial, and as not within the issues of this case.

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Mr. Gross: I claim it, your Honor, on the ground that I want to show that the death of Shiras Morris was the controlling factor in bringing this about, and that it will develop from the testimony, if it is admitted, that not only did the Arrow Company become the logical purchaser of this company that was without an operating head, but also that other negotiations virtually determined that it become about the only one.

Examiner Reeves: The objection is over-

1055 ruled.

Mr. Gross: Answer the question.

Mr. Haycraft: Exception.

A. In answer to that question, it is true, that under the necessity of permitting the Morris interests to withdraw, I did, on behalf of the company, make a considerable number of efforts to dispose of the company in a proper way.

Q. Without disclosing the names, which would be confidential, were any of those negotiations of such a nature that the company could have been sold for a proper figure or in a proper way to any-

1056 one else other than it was finally accomplished?

Mr. Haycraft: I wish to renew my objection on that, and add the further reason that this question calls for a conclusion which this witness is not entitled to draw from the facts. It is not proper cross examination. We are going into a field which, to my mind, is entirely foreign to the issue in this case. I can see where it is leading us.

Mr. Gross: I claim it on the ground that this gentleman as president of the company follow-

ing the death of Shiras Morris, was charged with the responsibility for the successful operation of the company without an operating head. He was also charged with the responsibility to his stockholders, who had large investments in his hands. It was peculiarly within his knowledge, and I claim it particularly as the basis for his ultimate conclusion that it was proper and right to do what was ultimately done, dispose of the company in the way it was done. It is the basis on which he justifies what was ultimately done.

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Mr. Hayeraft: But that is not an issue.

Examiner Reeves: Let the reporter read the question.

(The last question was read by the reporter.)

Examiner Reeves: The objection is sustained.

Mr. Gross: Will your Honor grant me an exception?

Examiner Reeves: An exception may be noted.

Q. During the negotiations, between February and July, did you ever receive a cash offer for your company, which, in your opinion, was an adequate consideration for the inherent value of the company, as you knew it to be?

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Mr. Hayeraft: I object to that as immaterial.

Examiner Reeves: It probably is immaterial, but the objection is overruled.

Mr. Hayeraft: Exception.

A. I received no such offer.

Q. Did you receive any other offers which would look to the amalgamation or reconstruction of the

1060 capital structure of the Hart & Hegeman Manufacturing Company, in connection with other companies, which, in your opinion, were not proper from the point of view of your own company or stockholders to enter into?

Mr. Hayeraft: That is objected to.

Examiner Reeves: The objection is sustained.

Mr. Gross: May I have an exception?

Examiner Reeves: An exception may be

1061 noted.

Q. Will you give us something of the nature of what we call the good will value attaching to the Hart & Hegeman business? That is, around what had its value been built? In other words, was it predicated upon the merchandise of a trade mark or trade marks which had been the basis of a large part of your good will? A. Yes, they had. The proprietary value inherent in that business was largely a matter of the H. and H. trade mark, which had been built up through years by maintaining a superior quality of merchandise and

1062 through advertising and sales promotion efforts in their behalf.

Q. The trade mark is "H. and H." on a background of a switch. How would you describe it? A. The chief trade mark would be so described, as the initials "H. and H." enclosed in the outline of a surface switch.

Q. As I understand it, it was the result of intensive sales promotion and advertising and their proprietary value had been built up around that trade mark? A. Yes, we believed it would aid the value of any material possession of the company. It was the most valuable asset of the company.

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Q. It was the hallmark of quality? A. Yes, sir.

Q. Whether or not in your negotiations with Mr. Grier, which resulted in the formation of the old respondent, it was recognized by you that there was likewise a large proprietary value built up around the Arrow trade mark? A. There was.

Mr. Hayeraft: That is objected to as not proper cross examination and also as incompetent, and not within the issues in this case.

Examiner Reeves: The objection is overruled.

Mr. Hayeraft: Exception.

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A. (Continuing) Yes, we did recognize a similar value.

Q. Whether or not the form of the organization of the holding company to acquire the common stock of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company was devised and carried out for the sole purpose of preserving the proprietary value of the sales organization and trade marks of those two respondent companies in the trade.

Mr. Hayeraft: That is objected to as not within the issues in this case.

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Mr. Gross: I claim it, if your Honor please, I am trying to show the good faith, that the very purpose of this organization was to do exactly what we had a right to do, to prevent lessening competition, and to preserve competition, which is the very point in issue.

Mr. Hayeraft: The trouble is that the statute that we are trying to enforce does not make any provisions for such reasons or propositions

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that might enter into it. The statute is limited in its language, and does not make provision for such a defense, so we are going into realms of speculation again that are not germane to the issues in this case, regardless of what is or might be the intention of the parties. There is nothing at all as to the intent in it.

Mr. Gross: We have the decision of the Supreme Court of the United States in the case of the International Shoe Company against the Federal Trade Commission, decided January 6, 1930. Without going into it in any great length, I wish to read two sentences from that decision:

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"In Federal Trade Commission versus Sinclair Company, 261 U. S. 463, 476, referring to the Clayton Act and the Federal Trade Commission Act, this Court said: 'The great purpose of both statutes was to advance public interest by securing fair opportunity for the play of contending forces ordinarily engendered by an honest desire for gain.' Mere acquisition by one corporation of the stock of a competitor, even though it results in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree. * * *. That is to say, to such a degree as will injuriously affect the public'."

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At the point where I stated the stars there is the citation of Standard Company versus the Magrane-Houston Company, 258 U. S. 346, 357. It appears in the minutes of the Board of Directors of the old respondent, the holding company, held on November 10, 1928, that counsel

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reported to the Board the attitude of the chief counsel of the Federal Trade Commission, that he was not interested in that question, that the Clayton Act carried its own measure of liability, and the good faith, or the fact that the public was benefited, had nothing whatever to do with it. He said he was not interested in the question. Now, we have the Supreme Court of the United States; and I am going forward now to show that this gentleman took up deliberately this form of an organization which was intended to preserve—and we will show by further testimony that it did absolutely preserve—the freest, and fullest, and most complete competition between these two companies which was necessary for the preservation of those good-will values attaching to those two trade marks. I claim that it is entirely relevant.

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Mr. Hayeraft: Mr. Examiner, I haven't any quarrel with the decision that has been read. The trouble is the interpretation. There is nothing in the decision at all with respect to good faith. It is all with respect to the effect counsel has read into it—the good faith and intention. Reference is made to the intention of the framers of the act, but not to the parties who are doing things within the act. If he will restrict himself as to what transpired after the merger, I have no objection. What might have been in the minds of these gentlemen is another matter, which is not in the statute. There is nothing in that statute or in the decision which has anything to do with the good faith of parties entering into a transaction.

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(There was a discussion off the record.)

1072 *Samuel P. Williams—Cross.*

Examiner Reeves: We will take a recess for five minutes. In the meantime I want to read that decision.

(A short recess was taken.)

Examiner Reeves: It is not clear to the Examiner that the question propounded by counsel for the respondent is relevant and material, but the doubt which exists in the Examiner's mind will be resolved in favor of the respondent, and the objection will be overruled.

Mr. Haycraft: Exception.

1073 The Witness: May I hear the question again?

(The last question was repeated by the reporter.)

A. It certainly was devised and carried out for that reason.

Q. After the holding company was organized and during the fifteen months of its corporate existence, was there any lessening of competition between the Hart & Hegeman Manufacturing Company and the Arrow Electric Company?

Mr. Haycraft: I must object to that, as calling for a conclusion of the witness.

1074 Examiner Reeves: The objection is sustained.

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: An exception may be noted.

Q. You were an officer and director of the holding company, the old respondent. Did the holding company in any way, by exercise of its right to vote, or otherwise, attempt to dictate the sales policy or to dictate in any way as to competition between the

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Hart & Hegeman Manufacturing Company and the Arrow Electric Company during the entire period of its organization and operation.

Mr. Hayeraft: That is objected to.

Mr. Gross: I claim that, if your Honor please.

Mr. Hayeraft: It is too broad a question. It is impossible for this witness to answer that question.

Mr. Gross: I claim it, if your Honor please, that the gentleman, being the head of the sales organization of one of the two operating companies, and being an officer of the holding company, knows perfectly well what took place, and whether or not the holding company did in any way attempt to dictate.

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Examiner Reeves: The objection will be overruled.

Mr. Hayeraft: Exception.

A. No, sir, the holding company exercised no control or influence in any way whatsoever over the sales activities of the two companies.

Q. I call your attention to Exhibit 39, being the minutes of the meeting of the Board of Directors of the old respondent Arrow-Hart & Hegeman, Incorporated, held January 5, 1928, at which time, it appears from the minutes, that in accordance with article 7 of the by-laws, this company designated and delegated persons eligible for election as directors of the constituent companies at the annual meetings of these two companies, and I ask you if those two groups of men designated as eligible for the Hart & Hegeman board and for the Arrow board were, in fact, the men who were on the

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Boards of Directors of those two companies prior to the formation of the holding company? A. Yes, sir, they were.

Q. Whether or not those two boards, therefore, continued to operate the two constituent companies, that is, the Hart & Hegeman Manufacturing Company and the Arrow Electric Company, as previously? A. Yes, sir, they did continue.

Q. During the period of the operation of the old respondent, the holding company, did the two companies, the Arrow Electric Company and the Hart
1079 & Hegeman Manufacturing Company, maintain their separate offices in their respective plants as formerly? A. Yes, sir, precisely the same.

Q. Hart & Hegeman, therefore, maintained their offices in the old Hart & Hegeman plant at the corner of Capitol Avenue and Broad Street? A. Yes, sir.

Q. And the Arrow Company maintained their offices in their plant at Hawthorne Street? A. Yes, sir.

Q. Both in Hartford? A. Yes, sir.

Q. Did the two companies during that period of time maintain absolutely independent and separate
1080 sets of books of account and sales, and so forth? A. Yes, sir, they were absolutely independent.

Q. During that period of time, I think you have testified, that the sales force of the Hart & Hegeman Company was increased rather than diminished, is that right? A. It was.

Q. Do you know now, as a matter of fact, from the records as you have them through the new respondent, whether or not the expense of sales of the two companies during that fifteen months increased over what it had been prior to the organization of the old respondent, the holding company?

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Mr. Haycraft: Let us keep the record straight on the H. and H., when you say the two companies. I did not inquire into that.

Mr. Gross: I do not think it is necessary to keep that distinct. Let the record show what was spent by the two companies.

Mr. Haycraft: I must object to that as improper cross examination. We have another witness coming on in that. I did not go into it except as to the Hart & Hegeman.

Mr. Gross: Well, I think it is proper cross examination. You can't separate them. The question is, What was the effect of the holding company? What did the subsidiaries do on sales effort? and I want to show that they spent more money. I claim that right.

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Mr. Haycraft: I have an objection.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

Mr. Gross: Will you read the question?

(The last question was read by the reporter.)

A. Yes, sir, the expense increased.

Q. Can you give us the figures by years for the years prior and during the holding company's existence; for instance, 1926, 1927, and 1928? A. The sales expense—

1083

Q. For the year 1926. A. (Continuing) was $550,004.

BY MR. HAYCRAFT:

Q. Which company? A. This is the combined sales expense.

1084 *Samuel P. Williams—Cross.*

Mr. Hayeraft: I wish to renew my objection to that, on the same grounds, that, not only is it improper cross examination, but I don't see how we can determine the relation.

Mr. Gross: You can go into that later and get the figures.

Mr. Hayeraft: Make him your own witness for that purpose.

Mr. Gross: No, I will not. It is relevant cross examination of the question of what was accomplished.

1085 Mr. Hayeraft: The record shows the questions I asked the witness, and when you go beyond proper cross examination, you are making him your own witness.

Examiner Reeves: The objection is overruled.

Mr. Hayeraft: Exception.

A. The sales expense for 1926 was $550,001; for 1927 it was $556,741; for the year 1928 it was $594,000.

Q. In your testimony on direct examination you briefly indicated the nature of the appliance business of the Hart & Hegeman Company under the
1086 sales direction of John R. Cook. Will you explain what you mean by the appliance business in that department, its character, how it comes to you, and how it is developed by Mr. Cook? A. The appliance business is entirely distinct from that which we commonly call the wiring device business. The material is not catalogued; it is not, as a rule, sold through our jobbers, but is solicited and sold direct to the manufacturers of tools and machinery, such as printing presses, vacuum cleaners, gasoline pumps, radios, and that class of material requiring

current control. It is increasingly important with the Hart & Hegeman division, and Mr. Cook has been successful in developing the business.

Q. Is it largely something which is made up on special order, as distinct from goods carried in stock? A. Very largely. It is not quite exclusively so, but we do a great deal of special engineering in connection with many of the projects which are brought to us of that nature.

Q. In other words, the Hart & Hegeman Company, through the inventive genius of Mr. Guett would get a problem from a manufacturer and 1088
would solve it by designing a peculiar type of switch to fit a particular point in a particular article manufactured by another manufacturer? A. That is true. Mr. Guett is the recognized leader in that respect.

Q. Roughly, how large a part of the business of the Hart & Hegeman Company did that appliance business, so called, constitute? A. You are referring to what period?

Q. Well, the period prior to and during the holding company's existence, 1926, 1927, and 1928. For example, during the year 1926. A. The appliance business was $1,108,784, as against catalogued or 1089
shelved goods of $1,985,909.

Q. That schedule excluding— A. I have compared the appliance business with the shelf goods business.

Q. Yes, excluding exports and goods sold to other manufacturers? A. Yes.

Q. In other words, it is thirty-six per cent. of the total of those two items? A. Yes, sir.

Q. Now, taking the period of 1927, what were the figures? A. The corresponding figures for the year 1927 were $1,309,273 for the appliance busi-

1090 *Samuel P. Williams—Cross.*

ness, and $1,881,979 shelf goods, the appliance business being forty-one per cent. of the combined.

Q. It is a combination of those two items? A. Yes, sir. It may be proper to show that between those two years the business showed a gain of 18.2 per cent., whereas the shelf goods showed a loss of 5.2.

Q. Now, the year 1928, which is the one full year of the operation of the old respondent. A. During that year the appliance business amounted to $1,798,840, and the shelf goods amounted to $1,820,-

1091 157. Between those two years, a gain in the appliance business was thirty-six per cent. In this case it was forty-nine per cent. of the combined total.

Q. Excluding exports and goods sold to other manufacturers? A. Yes.

Q. Now, will you give the Arrow figures for their sales of the same character during those three years, as they are disclosed by the books?

Mr. Hayeraft: I would like to make an objection here, and that you let me present my Arrow case.

Mr. Gross: I am perfectly willing, and I will withdraw that question now.

1092 (There was a discussion off the record.)

Q. Has Hart & Hegeman always had a very considerable export business? A. Yes, it is very considerable.

Q. What countries largely do they export to, roughly? A. Well, I believe the principal countries are England, Australia, and South American countries.

Q. Have you figures for the Hart & Hegeman export business during those years, 1926, 1927, and

1093

1928? A. In the year 1926 the Hart & Hegeman Manufacturing Company's export business was $577,525; and in 1927, $440,005; in 1928, $423,206.

Q. The Hart & Hegeman Company was organized in 1890, and began almost, as I understand it, with the development of the electric wiring device trade as an infant industry? A. It was one of the pioneers in the industry.

Q. Will you state whether or not it has always featured and has been known primarily as a concern manufacturing switches? A. Yes, it has. It has been so known.

1094

Q. Whether or not the Arrow, on the other hand has been known generally throughout its history primarily as a socket manufacturer? A. Yes, the Arrow Company has been so known.

Q. So that, on their primary lines, the bringing of the two companies into harmony, through a holding company or otherwise, there has been for each company a supplementing of its own primary line by the line of the other company? A. It has been of a supplementary and a complementary nature in regard to the goods.

Q. Whether or not, in the trade today, it is largely a question of competition on the quality, as distinct from being based on any basic patents? A. Yes, it is.

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Q. Whether any real basic patents exist in the industry? A. Very few, if any. Nearly all have expired, and the field has been so thoroughly covered, and the art is so advanced, and so ancient, that it is very difficult to get any more basic patents. They are merely detail patents that can be obtained to-day.

1096 *Samuel P. Williams—Cross.*

Q. The question of competition is largely a question of what has been referred to here as shelf goods.

Mr. Haycraft: That is objected to.

Q. Is there any real competition on what you call special designs of these appliances?

Mr. Haycraft: That is objected to as calling for a conclusion of the witness. There is no
1097 evidence to support it, to form a base for that conclusion.

Mr. Gross: He is a man experienced in the trade.

Mr. Haycraft: This man does not go out and call on the trade. He does not come in contact with the men.

Examiner Reeves: Read the question.

(The last question was read by the reporter.)

(Discussion off the record.)

Q. Let me reframe the question. Whether or not the competition which your salesmen meet throughout the United States is confined almost exclusively
1098 to what we call catalogue or shelf goods?

Mr. Haycraft: That is objected to, Mr. Examiner.

Mr. Gross: That calls for a statement from a man experienced in the business, having been in charge during those years of the sales organization of the Hart & Hegeman Company, and he knows what the conditions of the trade are. It is a conclusion of fact, and not of law, and any witness must state facts.

Mr. Haycraft: First, he stated that Mr. Everest has been in charge of the sales within the last few years.

Mr. Gross: I am confining it to the time he was in charge.

Mr. Haycraft: In the second place, the question of the type of competition that the salesmen were required to meet was a matter for the salesmen to testify to themselves.

Mr. Gross: You mean the traveling salesmen?

Mr. Haycraft: Yes, the traveling salesmen. They are the men to testify to that. 1100

Mr. Gross: That is a most remarkable statement. The man who is in charge of the home office knows that.

Examiner Reeves: Overruled.

Mr. Haycraft: Exception.

(The last question was read by the reporter.)

A. I would say that there is where most severe competition is felt, decidedly so. The competition, on any other lines, I know, is less apparent, if it exists, because of the different type of material, and the fact that we are selling engineering service in connection with producing such goods. 1101

Q. In connection with that special appliance work in this department of which Mr. Cook is the head, state whether or not your company is the largest business of that kind in the United States?

Mr. Haycraft: If he knows.

Mr. Gross: If you know.

Mr. Haycraft: Of course, that places too much on the witness. He has not been qualified to know.

Mr. Gross: Let us find out.

1102 *Samuel P. Williams—Redirect.*

Mr. Haycraft: We are going too far afield on this. I did not put this witness on as an expert. There is a lot of evidence which should go in as a direct defense of the case. It seems to me that we ought to follow some rules of presentation of the case.

(Discussion off the record.)

Mr. Gross: We do not want any friction between you and us, Mr. Haycraft. If you prefer to have it come in on our own case later on, and that is the objection, I will yield to it.

1103 If you say this is not proper cross examination on the question of the appliance business, I will make no exception now, reserving the right to introduce it in our own case later on. You must take one horn of the dilemma or the other.

(Discussion off the record.)

Examiner Reeves: Are you objecting, Mr. Haycraft, as one of the grounds, that it is not proper cross examination?

Mr. Haycraft: Yes.

Examiner Reeves: The objection based on that ground will be sustained.

Mr. Gross: Without prejudice to offering the

1104 evidence on our defense?

Examiner Reeves: No, sir.

We will take a recess for five minutes.

(A short recess was taken.)

Mr. Gross: I am through with the cross examination of Mr. Williams, Mr. Commissioner.

Examiner Reeves: Is there any redirect?

Mr. Haycraft: Yes, there will be a little.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. In business transactions between the Hart & Hegeman Manufacturing Company and the Arrow

Electric Company during that fifteen months' period, from October, 1927, to January, 1929, with respect to the assets and business of the Paiste Company and the porcelain works, who determined the value of the property that was being transferred? A. Those values, as far as I know, were taken from our books.

Q. Cost? A. As they stood on the books.

Q. What was done with the proceeds of the sales? A. I am not sure that I recall how the proceeds were used without referring to the books.

Q. Can you do that? A. Later I can.

Q. All right. 1106

(Discussion off the record.)

Q. In the case of the Paiste Company, were the assets of that concern owned by the Hart & Hegeman Company or by the Paiste Company? A. They were owned by the Paiste Company.

Q. And the stock of the Paiste Company was owned by the Hart & Hegeman Manufacturing Company? A. Yes.

Q. Then, my question would be: What became of the proceeds in the hands of the Paiste Company? A. Yes, sir. 1107

Q. Now, so far as the porcelain works are concerned, the assets of that concern were owned by the Hart & Hegeman Manufacturing Company? A. No, sir, the capital stock.

Q. Then the transaction would be in the same manner? A. Yes, sir, as I understand it.

Q. With respect to the business transactions between the Arrow Company and the Hart & Hegeman Company on products manufactured by the Arrow Company for the Hart & Hegeman Company,

1108 *Samuel P. Williams—Redirect.*

how was the price determined? A. The sales were made to the Hart & Hegeman Manufacturing Company less a small discount from the selling prices.

Q. Who determined the selling prices? A. They were taken from the catalog prices at which Hart & Hegeman would sell the goods.

Q. Who determined those prices? A. They are a matter of record in the catalog.

Q. Who made them up in the beginning? A. They were gradually devolved, and existed. There were no prices made for this occasion on these

1109 particular goods.

Q. Who had charge of the determining of what prices should be received for those goods when they were sold by the Hart & Hegeman Manufacturing Company? A. They were sold at our standard, published prices.

Q. Who determined what those prices are when placed in the catalog? A. I believe that the sales manager and the management in general adopted prices in the general process of meeting the market conditions.

Q. Did you have anything to do with them? A. Undoubtedly.

1110 Q. Mr. Grier? A. Not for the Hart & Hegeman Manufacturing Company.

Q. Do you mean he was not consulted? A. No, sir.

Q. Now, the automatic screw machines and parts that were made by the Arrow Company, how was the cost or the price at which they were to be sold to the Hart & Hegeman Manufacturing Company determined? A. My recollection on that is that such parts were billed to the Hart & Hegeman Manufacturing Company at the cost to produce, plus a percentage.

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Q. Now, about the experts that were used by the Hart & Hegeman Company from the Arrow Company; who were they? A. I can only recall—One was Mr. Wilmot; there was also Mr. Stevenson and Mr. Ten Eyck.

Q. What did they do? A. Well, Mr. Wilmot's work was mainly in connection with the production system.

Q. Of what products? A. Of the goods manufactured by the Hart & Hegeman Manufacturing Company; switches, and so forth. Mr. Ten Eyck and Mr. Stevenson in connection with systematizing, accounting and records.

1112

Q. Did they put in the Arrow system, that is, the system which was used by the Arrow Company? A. Yes, we believed that the Arrow system was superior to that employed by the Hart & Hegeman Company, and in respects where it was so considered, we adopted it.

Q. That was during the fifteen months' period. Subsequent to that time?

Mr. Gross: I object. That was not gone into on your direct.

Examiner Reeves: Read the question.

(The last question was read by the reporter.)

1113

Mr. Gross: I have my general objection relating to the period of the merger, but this is an added objection.

Mr. Haycraft: I asked some general questions along that line.

Mr. Gross: We have not gone into questions of economies of production or accounting or operation after the fifteen months, have we?

Mr. Haycraft: In my direct examination I covered or started to cover it in detail, but decided to use the sales manager for the detail.

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Mr. Gross: After the merger is another matter, and it is another question, which has not been gone into at all.

Examiner Reeves: The objection is sustained.

Mr. Haycraft: Then, do I understand that I am not allowed to interrogate this witness with respect to what transpired in his office of the new corporation subsequent to January 1, 1929?

Examiner Reeves: Read the question again.

(The question was read by the reporter.)

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Mr. Gross: You will certainly concede that I did not go into that on cross. Now, the question is, Is he going back to his original case?

Examiner Reeves: That is what I had in mind when I made the ruling.

Mr. Haycraft: This witness testified in chief as to general changes that were made subsequent to January, 1929. Then, when I went into detail as to the personnel and sales force, I discontinued examining him and was to put another witness on; but I do not feel that I should be prevented on redirect from bringing out what changes were made after January,

1116

1929, which relate to changes which were made prior to that time. It was brought out on cross-examination. In other words, in cross-examination he brings out certain changes were made with respect to effecting economies, and so on.

Mr. Gross: During the fifteen months' period.

Mr. Haycraft: During the fifteen months' period, and it seems to me that I am entitled to show how that continued on, to show the

changes that were made in the period that followed.

Mr. Gross: You can later by another man.

Mr. Haycraft: This witness is the man with which you brought the conditions out. I want to show that the conditions continued on or changed in some respects.

Mr. Gross: He testified after January 1, 1929, that is another man's function, and that is why you stopped.

Examiner Reeves: It occurs to the Examiner that the redirect should be limited to matters, developed by the cross examination. 1118

Mr. Haycraft: Yes, it is limited to that, but not as to the period of time. In other words, the cross examination restricted the period of time, and it seems to me that on redirect I can show whether the conditions were the same or different as in the fifteen months' period—simply because counsel purposely refrained from going into that period, because of his feeling of the right of the Commission to go into that period of time.

Mr. Gross: Oh, no.

Examiner Reeves: The ruling sustaining the objection will stand. 1119

Mr. Haycraft: I note an exception.

Q. With respect to the good will that might be attached to the trade mark of the Hart & Hegeman Manufacturing Company, how would that be reflected in the valuation of the property? A. It was never carried as any item at all in the assets on the balance sheets of the company, but anyone who has ever undertaken to market goods will realize that without such an old, established, proprietary

1120 *Samuel P. Williams—Redirect.*

value, they have the greatest difficulty of making any sales; and that question, how it was reflected—is what? How it reflected—

Q. In the valuation? A. It was considered to balance that of the proprietary valuation inherent in similar trade marks of the Arrow Company.

Q. Would it be measured by the length of time that the concern had been in the business and the amount of business that it had obtained during that period of time? A. It would be measured purely by the continuous and successful operation of the company for thirty-five or forty years. It would be
1121 measured also by the unusual and fully-recognized quality of the goods which had been marketed under that brand throughout that time.

Q. In offering my objection you were allowed to answer a question with respect to the purpose of the formation of the holding company, the old respondent, to the effect that the sole purpose was to preserve and carry on the trade mark value that was owned by the Hart & Hegeman Manufacturing Company. Would you say that that was the only reason or the sole reason? A. I believe the question referred to the form of the organization, and I should reply that, without doubt, the proprietary
1122 value of the respective brands was maintained and perpetuated best through that form of organization, and that continuous competition, which is essential to the continuation of that very valuable asset, was thereby allowed to operate freely; whereas, under any other organization it would be in danger of disappearing, and the most valuable possessions of the companies would disappear.

Q. Are you able to measure the extent to which the good will which might be attached to trade marks, such as owned by the Hart & Hegeman

1123

Manufacturing Company, is preserved or dissipated? A. I don't suppose there is any definite measure for that.

Q. One measure would be the diminution of the sales of that brand or trade mark over a period of years? A. Taking into account all other conditions, that would be one measure, but the other conditions are so diverse and numerous, that it is not by any means the only measure.

Q. Competition might force you to make goods inferior to the way they had been made, and thereby lose some of the value? A. That is conceivable, but in our case the reverse has been true. We have not.

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Q. Well, I am trying to take into consideration the various conditions which might affect it. A. Yes, but, if I may, I would not like to say merely yes or no to that, because it might leave a wrong impression.

Q. Referring to the items that you read into the record—the figures, showing the increased expense in the matter of sales. To what do you attribute the increase in 1927 over 1926, and 1928 over 1927 and 1926? A. I attribute the increase to the endeavor which we were making to keep our proportion of the business of the country and meet competition.

Q. Were there increases in sales? A. May I look at the figures?

1125

(Witness consults papers.)

The sales between 1926 and 1927 increased from three million, three hundred ninety-nine thousand dollars to three million, three hundred eighty-seven thousand dollars. As between 1927 and 1928 they increased from $3,387,000 to $3,839,000.

The ratio of selling expense to sales increased from seven and thirty-six hundredths per cent. in

1126 *Samuel P. Williams—Redirect.*

1926, to 18.14 per cent. in 1927, and the same figure in 1928.

Q. What particular item increased in your sales expense that would bring about that increase? A. I don't think I can analyze the figures to show that, but I believe that it was largely in the employment of salesmen and in expenditures for traveling expenses. That is my impression.

Mr. Haycraft: I understand that under the Examiner's ruling I will not be able to inquire as to the expense of selling in 1928 and 1929?

1127 Examiner Reeves: My ruling was based upon the theory that you were bringing up matters not brought out upon your direct examination and which had not be developed by the cross examination, and the recollection of the Examiner is that to permit this inquiry which you have referred to would be to permit you to go into new matters or matters not brought out upon your direct examination.

Mr. Haycraft: I must take an exception.

Examiner Reeves: I think you are overlooking the fact that your objections to an inquiry by counsel from respondent was sustained on

1128 the ground that it was not cross examination.

Mr. Haycraft: Yes, that one question.

Mr. Gross: I did not go into 1929 and 1930.

Mr. Haycraft: I am not claiming that you went into 1929 and 1930, but you went into the subject matter, which I am entitled to bring out. You carried it to a certain point and dropped it. I am entitled to carry it on.

Q. You gave, also, a number of figures, or, rather, percentages of the total, I think, appliances as dis-

1129

tinguished from shelf goods. Is it true that none of the appliances included in these percentages were sold through the catalog or salesmen calling upon the trade? A. I believe I must say that it is true.

Q. In other words, none of the appliances which you sold there were sold pursuant to sales representatives calling upon the trade or by soliciting the product in the catalog? A. The business on the appliance goods did not originate in any way through the effect of the catalog, no, sir.

Q. Who has charge of this appliance business from which these figures were made up? A. Who has charge of the sales?

1130

Q. Yes. A. Mr. John R. Cook had.

Q. I would like to ask at this time if the details of the sales, of these appliance figures, are prepared, so I can ascertain that from an examination of Mr. Cook as to these transactions? A. Details as to what respects, please?

Q. As to the customer and the item. A. I think you will find it in those figures which you have.

Q. By examining Mr. Cook? A. Yes, sir.

Mr. Gross: He is right here; he is in his office.

(Discussion off the record.)

1131

Q. In respect to your answer that the Hart & Hegeman concern was not known as a switch manufacturer, it is true, is it not, that since 1914 it had been advertising and selling sockets and plates and other items of that kind? A. It is true that we have been endeavoring to enter that field.

Q. And also, can you testify with respect to the Arrow Company, that it had been entering the switch field and had been cataloging and selling

switches since along 1920 or around that? A. Yes, without reference to any data, I might say that they had been endeavoring to acquire their share of that class of business, because it is almost essential that in order to promote the sale of your chief line you should be able to supply some of the goods of other types, even though you may not excel.

Mr. Hayeraft: I guess that is all.

Mr. Gross: One question on recross examination.

RECROSS EXAMINATION BY MR. GROSS:

1133 Q. Mr. Williams, Mr. Hayeraft, as attorney for the Commission, on his redirect, asked you with respect to the measure of the value of the trade mark of your company or of the Arrow, and whether it would be measured by the sales, and so forth. From your experience, what would have been the effect on the aggregate sales of these two companies after the organization of the holding company, the old respondent, if the two well-known brands or trade marks of the respective companies had been discontinued and a new one had been substituted?

1134 Mr. Hayeraft: That is objected to as incompetent, irrelevant, and immaterial.

Examiner Reeves: Objection overruled.

Mr. Hayeraft: Exception.

A. I believe that under those circumstances it would have been equivalent to commencing business all over again and throwing away the ground work of years and years of intensive labor, and that our company would have been a complete failure.

Mr. Gross: That is all.

Mr. Hayeraft: That is all.

HAYNES L. EVEREST, called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. State your full name and occupation. A. Haynes L. Everest.

Q. What is your occupation at the present time? A. Sales Manager of the Hart & Hegeman division.

Q. Of what? A. The Arrow-Hart & Hegeman Electric Company.

Q. How long have you occupied that position? A. Since the formation of the Arrow-Hart & Hege- 1136
man Electric Company.

Q. That is January, 1929? A. January, 1929.

Q. Prior to that time what was your occupation? A. Sales manager of the Hart & Hegeman Electric Company.

Q. The Hart & Hegeman Manufacturing Company? A. The Hart & Hegeman Manufacturing Company.

Q. How long were you sales manager of the Hart & Hegeman Manufacturing Company? A. Since 1919.

Q. Prior to that time what did you do? A. I was western manager in Chicago. 1137

Q. From the period of 1919 up until say October, 1927—if you recognize that date as the date the so-called holding company was organized—what were your specific duties as sales manager? A. I would say simply the promotion of sales. I had entire charge of the sales.

Q. You had charge of the sales force? A. The sales force.

Q. All branches? A. They were all under me.

Q. What products were included under your supervision? A. The whole wiring device line.

1138 Q. Did it include everything that was manufactured and sold by the Hart & Hegeman Manufacturing Company at that time? A. There were certain parts that I did not personally have supervision over. I did not follow it into details of a technical nature.

Q. What was that? A. The appliance end of the business.

Q. Who had charge of it? A. Mr. Cook.

Q. Mr. John R. Cook? A. Yes.

Q. To whom were you responsible? A. Mr. Morris, and later to Mr. Williams.

1139 Q. And to whom was Mr. Cook responsible? A. Mr. Cook, I should say, the same.

Q. In other words, he was responsible to both of those gentlemen but he was not responsible to you? A. No.

Q. During that period of time, from October, 1927, until January, 1929, was the same set up, the same division of authority, there? A. The same thing; no change.

Q. Then, from January, 1929, up to the present time—do you still occupy the same relative position? A. The same relative position.

Q. To whom are you responsible now, at the present time?

1140 A. To Mr. Pond.

Q. And what is his title? A. General sales manager.

Q. How long have you been under his supervision? A. Since the—I couldn't give you the exact date.

Q. Well, approximately. A. Why, I should say it was in 1929, sometime.

Q. Is Mr. Cook responsible to Mr. Pond also?

Mr. Gross: If he knows.

Mr. Haycraft: If he knows.

1141

A. I should say that was a question that I could hardly answer.

Q. During the period of time prior to October, 1927, what did you have to do with the making up of prices at which the products were sold under your supervision? A. I really had nothing to do with the making of prices.

Q. How were they made up? A. Why, we just simply met market conditions as we found them.

Q. Do you publish a price list? A. Yes.

Q. Did you place a price on the various articles in the list? A. Yes.

1142

Q. Who determined as to what price was to be placed on them? A. Well, it was more or less determined for us.

Q. Who had the final decision as to what price should be put into the price list of any particular commodity? A. It came down to me in the last analysis, whether we would charge that price.

Q. It looked to you whether you would charge that price or more or less? A. Yes.

Q. Was that true from October, 1927, to January, 1929? A. It was.

Q. Has it continued to be true since that date? A. Yes.

1143

Q. In making your decision, with whom did you consult? A. Well, it would all depend on the nature of the business. In the majority of the cases there would be no need of consultation.

Q. And what would be the exception? A. I can't think of any direct exception right off the bat.

Q. And did your firm allow discounts from these published lists? A. They were published right on our discount sheets.

Q. A trade discount? A. Yes.

Q. Were any exceptions from those discounts ever allowed? A. No, I would say no.

1144 *Haynes L. Everest—Direct.*

Q. That is true during this entire period? A. Yes.

Q. Now, did you have any supervision over the commission merchants that handled your products? A. The commission merchants were handled in exactly the same manner as our own salesmen.

Q. Who negotiated with them when they were employed? A. Well, as far as I can tell, everyone of the commission agents were hired before my entry into the game.

Q. In Boston, for instance, who was the commission man there who represented the line? A.
1145 Albert Mann.

Q. How long did he represent your firm? A. I could not tell you that. He was representing us when I came on from Chicago.

Q. When did he stop? A. When did he stop?

Q. Yes. A. In 1929.

Q. Do you know the approximate month? A. I could not tell you the month.

Q. What happened when he was discontinued? A. We put in our own manager.

Q. With a sales force? A. With a sales force.

Q. Who was that? A. J. W. Saladine.

Q. How long did he represent your company?
1146 A. He represented us until last year, the early part of last year.

Q. Of January, 1930? A. Sometime early in 1930. Sometime in 1930—I couldn't tell you the exact time.

Q. And then what happened?

Mr. Gross: I object to that. Of course, I have my general objection already, but I want this special objection.

Examiner Reeves: The objection will be overruled. I might state at this time that I am

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of the opinion that the objections to the various exhibits offered yesterday will be overruled. Later I will make for the record a formal statement of my position in overruling the objections.

Mr. Gross: May I note an exception to that on the record?

Examiner Reeves: Yes, an exception will be noted. Sometime during the afternoon I will make a formal statement for the record overruling the objections.

Mr. Gross: And noting exceptions?

Examiner Reeves: Yes, sir.

1148

Mr. Haycraft: Read the question.

(The last question was read.)

A. Mr. Saladine was brought into Hartford.

Q. What duties did he assume in the Hartford office? A. Special promotional work.

Q. Who replaced him in Boston? A. Mr. Nelson.

Q. And who was he before he replaced Mr. Saladine? A. He was the former Arrow manager in Boston.

Q. Did he continue to represent both divisions of the new respondent, the Arrow-Hart & Hegeman Electric Company? A. He represented both.

1149

Q. How many salesmen did Saladine have under him at the time when Nelson replaced him? A. Two.

Q. Are they still now working under Mr. Nelson? A. They are.

Q. How many salesmen does Mr. Nelson have in addition to those two? A. I will have to consult my records here, if I may.

Q. Yes. A. Mr. Nelson has three salesmen now, instead of two—only on the H. & H. Division.

1150 Q. He has three salesmen calling on the H. & H. trade? A. Yes.

Q. Does he call on the H. & H. trade himself? A. He does.

Q. That is, the larger customers, I assume? A. yes.

Q. To your knowledge, does Mr. Nelson attempt to solicit any of the so-called appliance business which Mr. Cook is responsible for? A. I think that is a question that is out of my—

Q. I say, to your own knowledge, do you know? A. I know very little about it definitely. I should
1151 say he did.

Q. What are your general instructions to sales managers and the salesmen under your division, the Hart & Hegeman division, with respect to the soliciting of trade? A. To get the business.

Q. Are they expected to call on jobbers who handle the Arrow lines exclusively? A. You are talking about H. & H. salesmen now?

Q. Yes. A. H. & H. salesmen are supposed to cultivate any jobber where there is any possibility of getting business.

Q. Do you recognize, as the H. & H. sales man-
1152 ager, there are jobber customers who handle the Arrow line exclusively? A. There are some jobbers who handle the Arrow line exclusively.

Q. Do your H. & H. salesmen solicit Hart & Hegeman business from those jobbers? A. They would not do so unless it was to get business that was going to somebody else, going to another competitor.

Q. Are H. & H. salesmen allowed to take orders for Arrow business? A. I don't know as that point has ever come up.

Q. Do you know whether or not they have ever done so? A. In cases where there was no corresponding device, the same as our salesmen have taken orders for other competitive materials.

Q. Would that also be true where the customer called on used the H. & H. material, not exclusively, perhaps, but almost exclusively, but had occasional orders for an Arrow device? A. I don't quite get the question.

Q. Suppose an H. & H. salesman called on a customer who was recognized as handling the H. & H. line, and that customer had some contract for an Arrow device, would the H. & H. salesman take 1154
the order? A. I don't know whether that question has come up for discussion.

Q. Who was your sales manager in Philadelphia in October, 1927? A. J. W. Alexander.

Q. Is he still your representative there, as well as the representative of the Arrow—there has not been any change in his office there since 1929? A. Minor changes.

Q. What do you mean by minor changes? A. There have been little changes here and there, but nothing important.

Q. Nothing like in Boston? A. No, no.

Q. He has not been placed in charge of the solici- 1155
tation of Arrow business in that territory? A. Oh, he has the—excuse me. He is now the joint manager. He manages both divisions in Philadelphia.

Q. How long has he had that responsibility? A. I would say that was in 1929—yes, 1929 or 1930.

Q. There were formerly separate offices there? A. H. & H. had their office in Philadelphia. I don't recall whether Arrow had an office there or not.

Q. Now, in Chicago, who was the sales manager under your supervision in October, 1927? A. A. E. Lubeck.

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Q. What, if any, changes were made in his office in 1929? A. None. He continued as the H. & H. manager.

Q. He moved his office from Chicago, did he? A. To Detroit, yes.

Q. Did it change his territory? A. He has a more intensive territory. We changed him with the idea of covering the territory more intensively, and enabling the manager to give more close supervision to the field.

Q. How many men does he have under him? A. At the present time?

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Q. Yes. A. Three H. & H. salesmen.

Q. He does not have any Arrow men under him? A. Yes.

Q. He does? A. He is the joint manager now.

Q. How long has he been joint manager? A. He has been the joint manager since this year.

Q. Just this year? A. Yes.

Q. And he has the same number of H. & H. salesmen as he had before? A. He has not.

Q. More or less? A. He has a very much smaller territory.

Q. What happened to the other territory that he had before? A. That has now a joint manager at

1158

Chicago.

Q. And who is in charge of that? A. Mr. R. L. Wildauer.

Q. What did Mr. Wildauer do before he was made joint manager in Chicago? A. He was manager of the Arrow.

Q. In Chicago? A. In Chicago.

Q. In other words, the H. & H. man went over to Detroit and the Arrow man stayed in Chicago? A. Correct.

1159

Q. The H. & H. salesmen who had been working under Lubeck are now working under Mr. Wildauer? A. Yes.

Q. They were in the Chicago office and did not go with Mr. Lubeck? A. Correct.

Q. I would like to have you define just what changes were made in that territory. What was the original Chicago territory, and what is now the new Chicago territory? A. The original territory included—the H. & H.?

Q. Yes. A. From Pittsburgh to the Sierra Nevada Mountains, and from Canada to Mexico.

1160

Q. How many salesmen did he have traveling that territory? A. Eight salesmen and two commission agents.

Q. Who were they? A. One in Dallas and one in Denver.

Q. Did he travel himself? A. He did.

Q. What did he attempt to cover? A. The high spots.

Q. The big customers? A. Yes.

Q. In this change that was made, what happened? How was the territory divided? A. The Detroit territory takes in the Southern Peninsula of Michigan, Ohio, Indiana and Kentucky.

1161

Q. And the balance of the territory? A. And the balance of the territory, with the exception of—well, it is hard to define it by states.

Q. Yes. A. Almost south of the Mason & Dixon Line, we made another territory. We cut off Texas, Tennessee, Arkansas and Louisiana from the Chicago territory.

Q. And you put that under a new office? A. Under a new branch manager.

Q. What states do you have under the Chicago man at the present time? A. What states?

1162 Q. Yes. A. Outside of Illinois, Minnesota, North and South Dakota, Montana, Colorado, Kansas, Nebraska, Missouri and Iowa, the Northern Peninsula of Michigan and Wisconsin.

Q. The commission merchant which you had at Denver, did he remain under the new manager? A. What period are you talking about?

Q. Since January, 1929. A. The commission agent remained under the Chicago office.

Q. There have been no changes there? A. There have been no changes there.

1163 Q. What territory does he cover? A. Colorado. Wait a minute, I forgot that New Mexico is in there. Colorado, New Mexico, Wyoming and Idaho. That is about all.

Q. He does not go into Montana? A. Wait a minute. Montana—he covers that mountain range there.

Q. And he gets credit for any sales that are made in that territory? A. Yes.

Examiner Reeves: The hearing will be adjourned until 3 p. m., daylight saving time.

(Whereupon, at 1:30 p. m., an adjournment
1164 was taken to 3 p. m., daylight saving time.)

AFTER ADJOURNMENT—3 P. M.

HAYNES L. EVEREST, resumed.

DIRECT EXAMINATION (con.) BY MR. HAYCRAFT:

Q. In the New York City territory, Mr. Everest, who was your branch sales manager there in 1927? A. 1927, A. F. Wilson.

Q. How long did he retain that position? Is he still there? A. He is dead. He died in office. I believe that was in—do you have to have a definite date?

Q. Well, approximately. A. 1929—in the early part of 1930.

Q. How many men did he have under him? A. He had four salesmen under him.

Q. What territory? A. He covered what we call the Metropolitan District, including Long Island and the eastern part of New Jersey, and just that southeastern tip of New York.

Q. I suppose he met the New England territory 1166
and the Philadelphia territory on those sides? A. Yes.

Q. Did he call on the trade himself? A. Yes.

Q. Upon his death, what did you do? A. I ran the office for a period of two or three months from here, and then we appointed a joint manager.

Q. Who was he? A. Mr. A. P. Deacon.

Q. That was in 1929? A. That was in 1930.

Q. How many Hart & Hegeman men does he have under him? A. Four. Now, you say?

Q. Yes, now. A. Four.

Q. What was his occupation before he was made branch manager? A. He was the Arrow manager 1167
in New York.

Q. In San Francisco, in 1927, who represented you at that time? A. A commission agent, Garnett, Young & Co.

Q. Do they still represent you? A. They do.

Q. Are they directly under you, or do they come under some other western branch? A. No, they are directly under this office.

Q. What territory did that San Francisco office cover? A. The Pacific Coast, on the other side of the Sierras.

1168 *Haynes L. Everest—Direct.*

Q. Now, the Atlanta territory. Who represented you there in 1927? A. We had two salesmen.

Q. Who were they? A. C. J. Broward and B. A. Watson.

Q. Did they have certain territory which each covered out of Atlanta? A. Yes.

Q. What territory did Mr. Broward cover? A. Florida, South Carolina, Georgia, Alabama and Mississippi.

Q. And what did Mr. Watson cover? A. Now, wait a minute. In 1927—Mississippi wasn't in that; also Louisiana.

1169 Q. What did Mr. Watson cover? A. He covered Mississippi, Arkansas and Tennessee.

Q. What changes were made, if any, in that office since that time? A. Well, we formed a branch office. We have a branch office in Atlanta.

Q. And who is in charge? A. Mr. Paul Ramsey.

Q. Does he have Hart & Hegeman salesmen under him? A. He has.

Q. How many? A. He has one.

Q. Is he also in charge of the Arrow sales in that territory? A. Yes.

Q. What territory does he cover there? A. He covers the same territory that the two men did.

1170 Q. When was that change made? A. In 1930.

Q. Have I covered all the changes that were made? I mean, have you covered in your testimony all the changes with respect to the sales organization since January, 1929 of the Hart & Hegeman division? A. There was one change in New York State.

Q. How was that handled? A. We have a salesman and joint manager.

Q. And where is his headquarters? A. Syracuse.

Q. When was that office created? A. In 1930.

Q. How was that territory covered in 1927? A. One salesman.

Q. Operating out of where? A. Out of—had nominally no headquarters; he was in Rochester, traveling all the time.

Q. How many salesmen do you now have under your supervision? A. 23.

Q. Does that number include divisional superintendents or heads? A. That is just the salesmen.

Q. To whom are these divisional superintendents responsible? A. To the branch joint managers.

Q. To whom are the branch managers responsible? A. Directly to Mr. Pond. 1172

Q. (Handing papers to witness.) Starting in the New England territory, who were the principal jobbers to whom the Hart & Hegeman Manufacturing Company were selling their products in 1927? A. Graybar, Boston.

Q. Well, take Boston first. A. Graybar.

Q. What other companies? A. Hardy, Lewis, Milhender, Sager, Shannon, Waahn, and Wetmore Savage.

Q. Out of that group that you have named, were any of them considered by your office as Hart & Hegemen distributors, not exclusively, but a great majority of their sales of wiring devices? A. Just 1173 let me get the point of your question. You mean exclusively H. & H.?

Q. Yes. Of course, you know they are not absolutely, but which you considered as such. A. We considered those concerns that I have mentioned as being those that gave us the greatest amount of support.

Q. The Graybar Electric Company at that time, was it an independent concern, or was it owned by some manufacturer? A. The Graybar at that time, as I recall it, was the same as it is today.

1174 *Haynes L. Everest—Direct.*

Q. What is your answer? Is it recognized as an independent distributor? A. As a branch house of an independent distributing organization.

Q. What I am trying to get at is, wasn't the Graybar Company recognized as a distributor of the Western Electric product? A. Why, yes, but I couldn't tell you the time of the connection between the Western Electric and the Graybar, to my knowledge.

Q. Since 1927, has the situation changed with respect to any of these dealers that you have now?

1175

Mr. Gross: I object to the "since 1927". There are two periods between 1927 and now, and I think we might just as well have it divided into those two periods.

Mr. Haycraft: It doesn't make any difference to me, except that it would make the direct examination a little longer.

Mr. Gross: It makes it clearer.

Q. During 1928, was there any change with respect to the relations between your office and your distributors? A. No.

1176 Q. You still relied upon them as your principal outlet in these cities? A. Yes.

Q. In 1929 and 1930, is that still true? A. Yes.

Q. Has there been any change in the representation, so far as you know, in that territory? A. Since that time?

Q. Yes, since 1929. A. None of note, no.

Q. From your knowledge of the territory, which of these concerns would you consider the largest distributors? A. Graybar, first.

Q. And which would you rank second? A. As a distributor?

Q. Yes. A. Not necessarily of our material?

Q. Yes. A. Wetmore Savage.

Q. Third? A. Milhender.

Q. Which is the largest distributor of your product? A. No. 1. Now, wait a minute, that fluctuates.

Q. In 1927, which was first? A. No. 4 was first. Then, number 6, and then number 1.

Q. In 1928. A. No. 4, No. 1 and No. 8.

Q. 1929. A. No. 4, No. 8, and No 1

Q 1930. A. No. 4, No. 1, No. 8.

Q. Apparently, No. 4 is your largest distributor in that city, according to your statement? A. That is correct. 1178

Q. Will you testify as to the products that you sold to No. 4. What principal products did you sell? I will let you take this, if you want it (indicating). Beginning in 1927. A. That has no 1927 lettered.

Q. Take 1928, then. A. Socket material, Schedule B.

Q. Second? A. Switches, Schedule S.

Q. Third? A. Schedule P.

Q. What does that include? A. Receptacles.

Q. 1929? A. Sockets, switches, and receptacles; the same order. 1179

Q. 1930? A. Sockets, switches, receptacles; the same order.

(Discussion off the record.)

Q. In Boston proper, from your records that you have before you there, were there any sales made to manufacturers during 1926 and 1927 by the Hart & Hegeman Manufacturing Company? A. Are you talking about Boston proper?

Q. Yes. A. None.

Q. In 1928? A. There were.

Q. Were these sales in 1928 made under your supervision to the manufacturers indicated from the record you have? A. They were not.

Q. Under whose supervision were they made? A. The appliance department.

Q. Would that be true in 1929 and 1930? A. Correct.

Q. Is that true with respect to all of them? I will ask you to look at that paper. A. That is true,
1181 yes, with respect to all of them.

Q. Referring to the sales of your product in Springfield, Mass., who was your principal distributor there? A. No. 115.

Q. That is in 1927? A. In 1927, No. 115.

Q. Has he continued to be the principal distributor since that time? A. Yes.

Q. Through both 1928 and since? A. Yes.

Q. Is that firm recognized as a Hart & Hegeman distributor exclusively? A. No, sir.

Q. It handles other lines? A. It does.

Q. Do you know whether or not it handles the Arrow line now and did in 1927? A. I couldn't
1182 tell now—

Q. You don't know? A. No, I don't.

(Discussion off the record.)

Q. Who was the principal Hart & Hegeman distributor in Worcester, Mass., in 1927? A. No. 1.

Q. And what other distributor did you sell to there? A. No. 93.

Q. In 1926, who was the principal distributor in Worcester? A. No. 93.

Q. Do you know why the change was made? A. I don't know what the year was, but there was a change in the ownership of No. 93, and in that change of ownership we naturally dropped into one of the minor places.

Q. Wasn't No. 93 of Worcester a branch of No. 8 of Boston? A. Yes.

Q. And No. 8 of Boston continued to be your distributor? A. Yes. That was largely specified material in Boston, specified by architects and engineers and contractors.

Q. What principal products did you sell to No. 115 in Sprinfield in 1928? A. In 1928, Schedule S, switches. 1184

Q. And second? A. Schedule B.

Q. About what would be the ratio between the two? A. It would be about 20 percent more.

Q. 20 percent more switches than sockets? A. Than sockets.

Q. And 1929? A. In 1929, Schedule S was still the greatest.

Q. The ratio was about the same? A. About the same, but not quite so large.

Q. And 1930? A. In 1930, it was the same; Schedule S. The ratio was much large in favor of Schedule S. 1185

Q. In Manchester, N. H., who was your distributor? A. No. 94.

Q. In 1927? A. The same.

Q. Has he continued since that time to be your distributor in that territory? A. Yes.

Q. Will you testify as to the products that you sold to No. 94 beginning in 1928. A. Schedule B. first.

Q. And second? A. Schedule S.

1186

Q. About what ratio would you say? A. Oh, about 25 percent.

Q. In 1929. A. 1929, Schedule B.

Q. Second? A. Schedule S.

Q. The ratio was about the same, or more? A. About the same.

Q. 1930? A. 1930, Schedule B first; Schedule S second.

Q. The ratio was about the same? A. Practically.

Q. If I understand you correctly, there were 25 percent more of schedule B than of schedule S? A. Correct.

1187

Q. Portland, Maine. Who was the principal distributor there? A. No. 79.

Q. Did you have any other distributor in that territory? A. No other distributor in Portland.

Q. How about Bangor? A. No. 78.

BY MR. BROWN:

Q. Those were your two principal distributors in that territory? A. Yes.

1188

BY MR. HAYCRAFT:

Q. Referring to No. 79, will you testify what products you sold to that distributor beginning in 1928. A. 1928; first, schedule B.

Q. Second? A. Schedule S.

Q. About what ratio, what proportion? A. Between 20 and 25 percent.

Q. More of schedule B than S? A. Yes.

Q. 1929? A. 1929, schedule B; second, schedule S.

Q. How about the ratio? A. About 10 per cent.

1189

Q. 1930? A. Schedule B; second, schedule S.

Q. And the ratio? A. About 12 percent.

Q. Take the other firm, up in Bangor, No. 78, the same question: what product did you principally sell? A. About the same. In 1928, schedule B; second, schedule S.

Q. What proportion? A. About 25 percent.

Q. 25 per cent more of B than of S? A. 25 per cent more of B than of S.

Q. 1929? A. Schedule B first; schedule S second. The ratio was about 10 per cent.

Q. 1930? A. Schedule S first; schedule B second. The ratio, about 15 per cent.

1190

Q. Take Bridgeport, Conn. Who were your principal distributors there? A. No. 149.

Q. Was he the principal distributor there? A. Yes.

Q. Did you consider him a Hart & Hegeman distributor exclusively, or otherwise? A. Not exclusively.

Q. What product did you sell to them? A. The entire wiring device line.

Q. What principally? A. Schedule B first.

Q. In 1928? A. 1928. Schedule S second.

Q. What ratio between them? A. The ratio was about 30 per cent in favor of schedule B. In 1929, schedule B first; second, schedule S. Practically no difference in the sales, in the percentage. 1930, schedule S first; schedule B second. The ratio about 20 or 25 per cent.

1191

Referring to your record, Mr. Everest, I will ask you whether or not during the years of 1926 and 1927 the Hart & Hegeman Manufacturing Company made any sales to manufacturers in that New England territory? A. None that I can see.

1192 *Haynes L. Everest—Direct.*

Q. I believe you testified in respect to the Boston territory that your department made no sales during that entire period. A. Correct.

Q. Is that true with respect to the whole New England territory? A. Yes.

Q. Primarily your salesmen did not call upon manufacturers in that territory? A. No. During this whole period?

Q. Yes. A. No; the business was handled by direct manufacturers' contact, owing to the nature, the special requirement, it automatically cleared
1193 through a department specially equipped to handle it.

Q. There would not be any way that you could tell from the record before you whether any sales to manufacturers in 1928, 1929 and 1930 went through your hands or not? A. Not direct.

Q. Will you state for the record the total quantity of Hart & Hegeman products sold in the New England territory in 1926? A. $315,911.

Q. In 1927? A. $292,227.

Q. Do you have any independent sales recollection why the sales dropped off as compared with 1926 in that territory? A. I can't state definitely,
1194 except one thing, that we were not getting the proper cultivation of the territory. The territory was not being worked as intensively as it had been prior to that.

Q. In 1928, what were your total sales? A. In 1928 the sales were $386,273.

Q. How do you account for that increase? A. I would say it was largely due to the fact that we put our own—well, I would like to consult the records there.

Q. Just look at your records. A. It is not here what I was looking for.

Q. Look at any records you wish.

(Discussion off the record.)

A. Due to an increase in manufacturers' business.

Q. In 1929, what were the total sales? A. In 1929, $481,058.

Q. What was the principal cause of that increase? A. I would say that that was due to the cause of general business very largely; also the increased activity in the appliance department.

Q. There was some increased business in your business also? A. Yes, some increase in my department also. 1196

Q. Now, in 1930, what was the total sales? A. $397,110.

Q. To what would you attribute the drop? A. To the general business depression.

(Discussion off the record.)

Q. Well, we will go to the New York territory. In 1927. I wish you would name about 10 or 12 of the leading jobber distributors in New York City territory, in what you would call the Metropolitan District. 1197

Mr. Gross: H. & H.?

Mr. Haycraft: Yes, H. & H.

A. Crannell, Nugent and Kranzer, Garfield Elliott Electric Company, Graybar, Holloway Bentz, Lehigh Electric Company, Monroe Lamp & Equipment Company, Manhattan Electric Supply Company, Smart Electric Company, Stanley & Patterson, Midway Electric Company.

1198 *Haynes L. Everest—Direct.*

Q. Did you sell a general line of wiring devices to these concerns named in 1927? A. We did, yes.

Q. How about the Premier Brass & Electric Supply Company? A. They ought to be in there. As a matter of fact, they go ahead of some of the others. I don't see them in this list here. Oh, yes, here they are. They are in Brooklyn.

Q. Do you consider it a large distributor? A. Yes, it should be at the head of the list there.

Q. Referring to that New York Metropolitan District, I will ask you whether or not from the
1199 records that you have before you, there were any sales to manufacturers in 1926 and 1927 by the Hart & Hegeman Company?

Mr. Gross: From his department?

Mr. Hayeraft: No, by the Hart & Hegeman Manufacturing Company.

A. According to the record, there is.

Q. And what firm? A. To Shelton Electric Co.

Q. In what year? A. 1926.

Q. Do you know what business that company is engaged in? A. Hair dryers, I believe.

1200 Q. Is that located in Brooklyn or New York City? A. It would be only a guess. I could not tell you.

Q. Was that the only one? A. That is the only one I can see.

Q. In 1928? A. In 1928 there were a good many.

Q. And in 1929 and in 1930 also? A. Correct.

Q. Now, referring to some of these firms that you have named as distributors, I will ask you to state for the record the principal product sold, beginning in 1928, the same as you did for the New

1201

England territory, beginning with No. 184. A. No. 184, in 1928, schedule S first; schedule B second. The ratio, 60 per cent in favor of S.

1929, schedule S first; schedule H second.

Q. What does H represent? A. H is miscellaneous material. Do you want that ratio?

Q. Yes. A. It is about 80 per cent.

1930, schedule S first; schedule H second. The ratio is about 65 to 70 per cent.

Q. Now, then, the same thing with respect to No. 190. A. No. 190: schedule S first; schedule H second.

1202

BY MR. GROSS:

Q. In 1928? A. This is 1928, yes. That is 300 per cent.

1929, schedule S first; schedule H second. Again, about 300 per cent.

(Discussion off the record.)

1930, schedule S first; schedue H second. 250 percent.

BY MR. HAYCRAFT:

1203

Q. No. 206. A. No. 206, 1928, schedule S first; schedule B second. That is about 400 per cent.

1929, schedule S first; schedule B second. About 25 per cent.

BY MR. GROSS:

Q. 25 or 250 per cent? A. 25 per cent.

1204

By Mr. Haycraft:

Q. It is more than that. About 40 per cent? A. 40 per cent?

Q. Yes. A. 1930, schedule S and schedule B. That would be, about, I think, 40 per cent.

Q. No. 326? A. No. 326, 1928, schedule B first; schedule S second. That would be about 25 per cent.

1929, schedule S first; schedule P second.

Q. That covers what? A. That covers receptacles. That is about 200 per cent.

1205

1930, schedule S first; schedule B second. About 50 per cent.

Q. I guess that next one is No. 186. A. No. 186, 1928, schedule B first; schedule S second. About 20 per cent.

1929, schedule S first; schedule P second. That is about 100 per cent.

1930, schedule S first; schedule B second. About 35 per cent.

Q. Does Poughkeepsie, N. Y., come in there? A. Poughkeepsie comes under New York State.

Q. Did it in 1927? A. It did.

1206

Q. What firm? A. No. 383.

Q. Was that the principal one? A. I don't think there were any others.

Q. What were the principal products that you sold to them in 1928? A. In 1928, schedule B first; schedule S second. About 30 per cent.

1929, schedule B first; schedule S second. About 35 per cent.

1930, schedule B first; schedule S second. About 20 per cent.

Q. Now, in Albany, who were your principal distributors there,—I mean of the Hart & Hegeman line? A. No. 380. Also No. 381.

1207

Q. Did they both handle your line exclusively? A. Neither of them did.

Q. What principal sales were made to No. 380 and 381 in 1928, 1929 and 1930? A. In 1928, schedule B first; schedule S second. 12½ per cent.

1929, schedule B first; schedule S second. About 15 per cent.

1930, schedule B first; schedule S second. About 12 per cent.

Q. With respect to No. 381, did you continue to sell through that firm during 1928, 1929 and 1930? A. We did.

1208

Q. How would the sales run? More or less? A. The sales ran very even.

Q. About the same? A. About the same.

Mr. Gross: You mean in volume; not proportions?

Mr. Haycraft: In volume.

Q. Take Syracuse. Who were the distributors of the Hart & Hegeman Manufacturing Company in Syracuse in 1927? A. In Syracuse, in 1927, No. 475 and 477.

Q. Those were the two principal distributors? A. They were the two principal distributors.

1209

Q. There were some other distributors there? A. Correct, there were.

Q. Handling other lines? A. Yes.

Q. Did any of these handle your line exclusively? A. Not to my knowledge.

Q. What were the principal products that you sold to No. 475? A. As to No. 475, in 1928, schedule S first; schedule B second. No percentage.

1929, schedule S first; schedule B second. 10 per cent.

1210

1930, schedule S first; schedule B second. About 10 per cent.

Q. Give me the same information with respect to the other distributor, No. 477. A. No. 477, in 1928, schedule S first; schedule B second. About 25 per cent.

1929, schedule S first; schedule B second. About 10 per cent.

1930, schedule S first; schedule B second. About 30 per cent.

Q. Rochester. Who were the principal distributors of the Hart & Hegeman products in Rochester during 1927? A. In 1927, No. 464.

1211

Q. In 1927? A. In 1927, yes.

(Discussion off the record.)

A. (Continued) No. 449, also. Those were the two.

Q. Those were the two outstanding distributors? A. Yes.

Q. What were the principal products sold? A. No. 464, schedule S first; schedule H second. Almost all S.

1929, schedule S first; schedule H second, with the same ratio.

1212

1930, schedule S first; schedule P second. Predominantly schedule S.

No. 449, 1928, schedule S first; schedule B second. Predominantly schedule S.

1929, schedule S first; schedule B second. The same ratio.

1930, schedule S first; schedule B second. About 75 percent.

Q. Now, going to Buffalo. Who were the principal distributors there? A. Buffalo, in 1927, No. 445 and No. 419.

Q. Those were the two principal distributors of that product? A. Correct.

Q. Did they exclusively handle it, or a general line? A. They handled a general line.

Q. I mean, of course, the leading lines? A. Yes.

(Discussion off the record.)

Q. Are you able to testify with respect to the products sold to No. 445 by the Hart & Hegeman Manufacturing Company in 1926 and 1927? A. Not as regards the ratio, but they handled the general line.

Q. Did they continue in business as your distributor after 1927? A. I mean, No. 445 of Buffalo. 1214
A. In 1928 the business was changed to No. 416.

Q. And did you continue to sell? A. We continued to sell them.

Q. What products were sold to No. 416 in that 1928-1929-1930 period? A. The complete line.

Q. Will you name the principal ones? A. Schedule S first; second, schedule B—200 percent.

1929, schedule S first; schedule B second. About 50 percent.

1930, schedule B first; schedule P second. 350 percent.

Q. What were the principal products sold to No. 1215
419 in 1928, 1929 and 1930? A. To No. 419, in 1928, schedule S first; schedule B second. Around 33-1/3 percent.

1929, schedule S first; schedule B second. 50 percent.

By Mr. Gross:

Q. That is 50 percent more than second? A. The ratio between schedule S and schedule B, in 1929, in favor of S, the first.

1216

1930, schedule S first; schedule P second. The same ratio.

Q. 50 percent? A. Yes.

BY MR. HAYCRAFT:

Q. Newark, N. J. A. Newark. In 1927?

Q. Yes. A. Nos. 497 and 498.

Q. There were some other companies in Newark, but those were the two that distributed your products? A. They were the two principal ones. There was also No. 495.

1217

Q. Would you say they were exclusively Hart & Hegeman distributors? A. They were not.

Q. Did you name No. 495? A. I added that. No. 495 is another one. That would be the third largest.

Q. What were the principal products sold to No. 497? A. In 1928, schedule S first; schedule B second. About 60 percent.

Q. 1929. A. 1929, schedule S first; schedule P second. About 60 percent.

(Discussion off the record.)

1218

1930, schedule S first; schedule P second. About 33 percent.

Q. The same with respect to No. 498. A. No. 498, in 1928, schedule S first; schedule P second. That is 16 to 4.

BY MR. GROSS:

Q. 400 percent, isn't that it? A. Yes, 400 percent.

1929, schedule S first; schedule P second. 400 percent.

1930, schedule S first; schedule H second. About 400 percent.

BY MR. HAYCRAFT:

Q. Now, No. 495. A. No. 495, in 1928, schedule S first; schedule P second. That is 10 to 2.

Q. 500 percent? A. 500 percent.

1929, schedule S first; schedule P second. 200 percent.

1930, schedule S first; schedule P second. Approximately 300 percent.

1220 Q. Now, we will go to Philadelphia. Who were your principal distributors of the Hart & Hegeman products in Philadelphia in 1927? A. Bell & Thomas, Franklin Electric Company—

BY MR. GROSS:

Q. In 1927? A. Yes, sir.

Graybar Electric Company, Westinghouse Electric Supply Company, Rumsey Electric Company, and the Novelty Electric Company. Those were the biggest.

BY MR. HAYCRAFT:

1221

Q. Were any of them exclusive distributors for the H. & H. products? A. They were not.

Q. And did they continue to represent Hart & Hegeman since that time? A. Since 1927; yes, they have.

Q. Did you sell a general line to all these firms? A. To the best of my knowledge, yes.

Q. Refer to No. 552, first. Beginning in 1928, what were the principal products sold to them? A.

1222 *Haynes L. Everest—Direct.*

No. 552, 1928, schedule S first; schedule B second. About 500 percent, roughly.

1929, schedule S first; schedule B second. That is preponderately in favor of schedule S.

1930, schedule S first; schedule B second. The same condition holds true there.

Q. No. 553. A. No. 553, 1928, schedule S first; schedule B second. About 50 percent.

1929, schedule S first; schedule P second. 100 percent.

1930, schedule S first; schedule P second. About
1223 200 percent.

Q. The same with respect to No. 555? A. No. 555, schedule S first; schedule P second. About 475 percent.

1929, schedule S first; schedule P second. About 600 percent.

1930, schedule S first; schedule B second. About 350 percent.

Q. No. 559. A. No. 559, 1928, schedule S first; schedule P second. About 350 percent.

1929, schedule S first; schedule P second. About 350 percent.

1930, schedule S first; schedule H second. That
1224 is a ratio of 24 to 5.

BY MR. GROSS:

Q. That is about 500 percent, isn't it? A. Yes, about 500 percent.

BY MR. HAYCRAFT:

Q. Did you make any sales to No. 617 in Philadelphia in 1927? A. I know that we did.

Q. Did you sell them a general line also? A. Yes.

1225

Q. I will ask you what principal products were sold to that firm beginning with 1928? A. 1928, schedule S first; schedule B second. About 250 percent.

1929, schedule S first; schedule B second. About 400 percent.

1930, schedule S first; schedule H second. About 600 percent.

Q. Now, what were the principal Hart & Hegeman distributors in Pittsburgh in 1927? A. Iron City Electric Company, Price Electric Company, Graybar, and Doubleday-Hill.

1226

Q. Do any of these organizations handle Hart & Hegeman products exclusively? A. No, sir.

Q. Did you sell the full line to these various distributors, as far as you know? A. As far as I know, yes.

Q. I will ask you to testify as to the principal products sold to No. 631. A. No. 631, schedule S first,—practically all. Schedule H would be second.

Q. That is true of all three years? A. Yes, sir.

Q. What about No. 633? A. Schedule S first; schedule B second. It is so close that there is very little percentage.

1929, schedule B first; schedule S second. 10 percent.

1227

1930, schedule S first; schedule B second. About 250 percent.

Q. Lancaster, Pa. Through what firms did Hart & Hegeman distribute its products? A. No. 708.

Q. Is that an exclusive arrangement that you had with that firm? A. No, not exclusive.

Q. Was that a large or small distributor in that territory? A. large distributor.

Q. Were your sales substantial? A. They were, to the best of my knowledge.

Q. The full line? A. The complete line.

Q. Will you state what principal products were sold through them? A. 1928, schedule B first; schedule S second. 5 percent.

1929, schedule S first; schedule B second. About 12 percent.

1930, schedule S first; schedule B second. About 50 percent.

Q. Look at the records which you have before you. Would you say as to the other products that you handled that they were pretty well distributed?

1229 A. Very well distributed.

Q. What distributors did you have in Williamsport, Pa.? A. No. 687.

BY MR. GROSS:

Q. In 1927? A. Yes, in 1927.

BY MR. HAYCRAFT:

Q. Did you have an exclusive arrangement with No. 687? A. No, sir.

Q. Was it a large or small distributor? A. It was a large distributor.

1230 Q. Were your sales to that firm substantial? A. Quite.

Q. Will you state what were the principal products, beginning in 1928, that you sold to them? A. Schedule S first; schedule B second. About 10 percent.

1929, schedule S first; schedule B second. About 25 percent.

1930, schedule S first; schedule B second. About 12½ percent.

Q. How about the other products? A. Very well distributed.

1231

Q. From your recollection of the business in this territory, which is known as the New York territory, I believe, consisting of about 15 districts— A. Do you mean the whole State of New York territory?

Q. No, what I have in mind is the territory which would include probably your Philadelphia and New York branch offices—going down into West Virginia— A. The territory that we have just covered.

Q. Yes. I want to ask whether I had included the principal distributors in that territory. A. To the best of my knowledge, you have.

1232

Q. Will you say that the ratio of distribution of the various products represented by these schedules would run about the same to the other distributors who were not included; or do you think the ones that we have picked were representative? A. I think the ratio would run fairly even.

Q. One might be more or one might be less. A. Largely according to locality. That has much to do with the type of material sold.

Q. Will you refer to your records and state what the total sales were in 1926 in this territory which we have covered?

(Discussion off the record.)

1233

A. That is, including metropolitan New York, New York State, and Pennsylvania?

BY MR. GROSS:

Q. Including Philadelphia? A. Including Philadelphia.

BY MR. HAYCRAFT:

Q. And parts of West Virginia. A. I don't know whether they are in here.

1234 *Haynes L. Everest—Direct.*

Q. Look at the very tail end of it there. A. And West Virginia.

Q. New Jersey? A. New Jersey would come in that, of course.

Now, in 1926, $1,010,373.

1927, $927,747.

1928, $1,373,083.

1929, $1,243,013.

1930, $958,044.

Q. I am going to ask you to go back to the records which you have before you there and indicate,
1235 outside the metropolitan New York, which we covered in my previous question, what manufacturers were sold by the Hart & Hegeman Manufacturing Company in 1926 and 1927. A. None.

Q. Now, then, in 1928, do you find a number of sales made to manufacturers? A. Yes.

Q. In 1929 and 1930 also? A. Correct.

Q. Will you state for the record how you account for the increased sales, 1928 over 1927? A. Largely to the sale of appliance material.

Q. Would that be true also of 1929? A. Correct.

Q. And you say your answer would be the same in respect to 1930 as in the New England territory
1236 —business depression? A. Business depression.

(Discussion off the record.)

Examiner Reeves: The hearing will be adjourned to Wednesday morning, at 10 o'clock daylight saving time, May 27, 1931:

(Whereupon, at 5 p. m. the hearing was adjourned to May 27, 1931, at 10 a. m., daylight saving time.)

Conference room, Arrow-Hart & Hegeman Electric Co., 103 Hawthorne Street, Hartford, Connecticut. 1237

May 27, 1931.

Met pursuant to adjournment, 10 a. m. daylight saving time.

Before—WILLIAM C. REEVES, *Examiner*.

APPEARANCES:

E. F. HAYCRAFT, Attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of CROSS, HYDE and WILLIAMS, 49 Pearl Street, Hartford, Connecticut, Attorneys for the Respondent. 1238

ARTHUR F. SHIPMAN, of SHIPMAN & GOODWIN, 15 Lewis Street, Hartford, Connecticut, Attorneys for the Respondent.

PROCEEDINGS.

Examiner Reeves: There have been offered in evidence a number of documents which relate to the organization of the respondent Arrow-Hart & Hegeman Electric Company and to its operation and the conduct of its business. Objections to the offer were made by counsel for respondent upon the grounds that such documents were irrelevant and immaterial, and that the matters to which such documents related were outside the jurisdiction of the Federal Trade Commission. These objec- 1239

1240 *Edward R. Grier—Direct.*

tions were taken under advisement, and are now overruled, and the documents heretofore marked for identification as Commission's Exhibits 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 60, 61, 62, 63 and 64 are received in evidence as exhibits, each taking the respective number given it for identification, to which ruling of the Examiner counsel for the respondents except, which exception is allowed.

(The documents were thereupon received in evidence and marked "Commission's Exhibits
1241 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 60, 61, 62, 63 and 64, respectively.")

(Discussion off the record.)

Mr. Haycraft: I will call Mr. Grier.

EDWARD R. GRIER, was thereupon called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Please state your name, residence, and occu-
1242 pation, Mr. Grier. A. Edward R. Grier, 140 Fern St., Hartford. Occupation president of the Hart & Hegeman Electric Co.

Q. How long have you been president? A. I have been president since the merger.

Q. January, 1929? A. January, 1929.

Q. The corporation of which you are president has been named respondent in this proceeding, and we term it the new respondent, I believe? A. Yes.

Q. And prior to January 1, 1929, what was your occupation? A. President of the holding company.

1243

Q. That holding company was named what? A. Arrow-Hart & Hegeman, Inc.

Q. We refer to that as the old respondent in this proceeding. A. Old respondent.

Q. And you were president of that from its organization in October, 1927? A. I was.

Q. At the same time that you were president, did you have any other official position? A. None whatever.

Q. Or in any other subsidiaries? A. No, sir.

Q. How about the Arrow Electric Company? A. I was vice-president.

Q. During the period from October, 1927 until January, 1929? A. Yes. 1244

Q. Who was president? A. Charles G. Perkins.

Q. And while you were vice-president of the Arrow Electric Company, and during that 15-months period, what were his official duties with the Arrow Electric Company? A. The president of the company; as president.

Q. He had full charge of the business? A. Full charge.

Q. Prior to October, 1927, you were vice-president of that same corporation? A. Vice-president of the same corporation.

Q. For how long a period of time? A. About 20 years. 1245

Q. And in the same capacity? A. In the same capacity.

Q. What was the business that the Arrow Electric Company was engaged in prior to October, 1927? A. Manufacturing electrical wiring devices.

Q. That would include, generally, what products? A. Shelf goods, as we determine it.

Q. Will you describe them. A. Shelf goods are goods which are used in the ordinary construction

1246 *Edward R. Grier—Direct.*

work of buildings and in electrical work. They are carried in stock by the various jobbers in the country.

Q. Can you identify this catalogue, Mr. Grier? A. I identify it as calalogue No. 21.

Q. Will you state when that was published or issued. A. Well, it does not say—October, 1925, I suppose.

Q. How long was it in effect? A. About a year or a year and a half, to the best of my knowledge.

Q. Does this catalogue contain a description of
1247 the various articles issued for sale? A. It does.

Q. Can you testify from your memory, or from the catalogue, the various products that were included? A. Switches, sockets and receptacles of all kinds, attachment plugs, and switch plates.

Q. Did you describe them by schedule in your catalogue and records? A. We did.

Q. How did you divide them by schedules? A. Sockets, B; switches by S. The balance of the line H.

Q. You didn't have— A. I am just looking to see if there are any more schedules here. Schedule P, plugs of all kinds. Schedule Y. I can't tell what Y is. It is an old schedule; a minor schedule.

1248 Q. Under those switches that you handled, what were the various types of switches? A. They were known as surface, push-button and flush switches.

Mr. Haycraft: I offer that catalogue in evidence.

Examiner Reeves: This catalogue will be received in evidence as Commission's Exhibit 72.

(The catalogue was thereupon received in evidence and marked "Commission's Exhibit 72.")

1249

Q. At that time, did you manufacture what is known as heater switches? A. We did.

Q. For what purpose were they manufactured? A. They were used on electrical ranges; electrical stoves or ranges.

Q. Can you recall when you first went into that line? A. To the best of my recollection, in the neighborhood of 1924.

Q. I ask you to identify this catalogue, which I hand you now. A. I identify that as catalogue No. 4, of April, 1927, containing heater switches.

1250

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This will be received in evidence as Commission's Exhibit No. 73.

(The catalogue was thereupon received in evidence and marked "Commission's Exhibit No. 73.")

Q. Did you sell these heater switches direct to manufacturers, or were they distributed to jobbers? A. We sold them both ways.

Q. How do you mean? A. We sold them direct to the manufacturers, and also billed certain numbers to our distributors.

1251

Q. You sold this general line as described in this catalogue No. 21 through jobbers? A. We sold them to distributors.

Q. Did you have branch sales offices? A. We did.

Q. Can you state now where they were located in 1926 and the early part of 1927? A. The principal offices were in New York, Chicago, San Francisco, Boston and Baltimore. The branches—the offices represented by salesmen who reported to the other principal offices were at Syracuse, St. Louis, Pittsburgh and Detroit.

1252 Q. Did you sell any through commission offices—brokers? A. No, not brokers. I would not use the term brokers. In the Boston territory, there, we had a commission agent.

Q. At Boston? A. At Boston. I think I am correct on that.

Q. Where did you manufacture the products which you had to sell? A. Hartford.

Q. All of them? A. All of them.

Q. Did you have any branch factories anywhere else? A. No, sir.

1253 Q. Where did you manufacture porcelain? A. Washington.

Q. Washington, New Jersey? A. Yes.

Q. Was that factory owned by you or by a subsidiary company? A. Owned by us. It manufactured exclusively for our products—the raw material.

Q. Did you build that plant at Washington? A. We purchased it.

Q. How long ago? A. To the best of my knowledge, I believe about ten years ago.

Q. When you bought it, did you buy the physical assets, or by stock control? A. We bought the stock.

1254 Q. How long did you own the stock before you bought the assets? A. Immediately.

Q. Did you transfer the assets? A. The assets followed the stock.

Q. What was the capitalization of the Arrow Electric Company prior to October, 1927? A. I don't remember. I would have to refer to the records. I might add this, that it consists of common and preferred stock.

Q. Do you know how much of each? A. I recall the preferred stock at that time was $2,000,000.

1255

Q. Did you inform yourself as to the common stock outstanding?

Mr. Gross: You can show him that merger agreement, Exhibit 51, I think. That would be the quickest way.

Mr. Hayeraft: Yes.

(Handing papers to witness.)

A. 30,000 shares of common stock at a par value of $25.

Q. I ask you to identify this paper which I hand you now, Commission's Exhibit No. 8. A. I identify 1256
this paper. It hasn't got the date down here.

Q. No. A. It is between Mr. Grier and Mr. Williams.

Q. Mr. Williams testified yesterday, or the day before yesterday, that you gave him that around the 4th of July. A. Yes, and I testify that that is correct.

Mr. Gross: 1927?

Mr. Hayeraft: 1927, yes.

Q. I also show you Exhibit 9, and ask you if you recognize that? A. I recognize Exhibit 9 as being 1257
a forecast made by me as to what could be accomplished.

Q. By the forming of the old respondent? A. Yes.

Q. Will you say, then, that the appraised value of the Arrow Electric Company on or about January 1, 1927, was about $4,500,000? A. If I said it in the record, I testify as so saying. I don't remember now.

Q. In other words, the statement that you made here in this memorandum probably would be taken from your records? A. In all probability. I can't be exactly certain where I got the figures.

Q. How did you arrive at the 60-40 percentage basis, the ratio between your business and the Hart & Hegeman business to go into the holding company? A. Simply a hunch from what I thought it was worth; a pure guess on my part.

Q. That was the guess that was followed? A. That was my best guess as to the value.

1259 Q. Based on your knowledge? A. Based on my knowledge of the business, taking everything into consideration.

Q. I show you Exhibit 10, and ask if you recognize that? A. I testify that the agreement made on the 6th of August by Mr. Grier and Mr. Williams is correct.

Q. That is Exhibit 10? A. Yes.

Q. Attached to that was a Schedule A, which purports to show the stockholders of the Arrow Electric Company as of that date. That is made a part of it. A. I identify that as a part of the agreement.

1260 Q. I show you Commission's Exhibit 11, which purports to be a supplemental agreement to the one that you have just identified, and ask if you recall that agreement? A. This is a supplemental agreement making certain changes.

Q. Yes. A. I identify the supplemental agreement of October 6, 1927.

Q. Commission's Exhibit 11? A. Yes.

Q. Can you state why that supplemental agreement was entered into? A. I don't remember—the chances are that we went over it roughly, and then,

1261

on the same day, that we went over it more carefully, and we made certain changes.

Q. It was changes in certain directors. The chances are that we thought it would be—my recollection is that we made the changes—I don't remember what the changes were.

Mr. Gross: You had better read it and see. (Discussion off the record.)

A. As I remember this document, the change was that there would not be interlocking directors in the two companies.

1262

Q. In other words, the men that were selected to serve as directors of the holding company were not to serve as directors of the operating companies? A. Yes.

Q. What did you do, Mr. Grier, in carrying out these agreements? A. We carried them out as per these agreements, as far as I can remember.

Q. What part did you play in that? What did you do? A. I associated myself with Mr. Williams, and together we saw that the things were carried out.

Q. I show you Commission's Exhibit 17 and ask if you recognize that? A. I identify the letter to Samuel P. Williams, written by me, under date of August 11, 1927.

1263

Q. I also show you Commission's Exhibit 18 and ask if you can recall that? A. I identify my letter to Mr. S. P. Williams of August 27, 1927, which suggested a letter to the distributors.

Q. Did you mail the letter which you have attached to it, August 25, 1927? A. We did.

Q. How many distributors did you have at that time, do you recall? Just approximately. A. I

1264 can't remember, but I should say in the neighborhood of 200 to 250. That is purely a guess on my part.

Q. Did the Arrow Electric Company, of which you were vice-president in October, 1927, take any action with respect to the formation of the holding company as outlined in this agreement of August 6, 1927? A. As a company?

Q. Yes. A. No.

Q. You were a stockholder? A. I was a stockholder only.

1265 Q. What did you do there as a stockholder? A. I talked with Mr. Williams, as a stockholder, to see if we can form a holding company.

Q. Did you take stock in the holding company? How did you get the stock? A. I received stock from the holding company for the Arrow stock.

Q. In exchange for it? A. I suppose you might call it exchange.

Q. After the holding company was organized, what changes, if any, were made in the business of the Arrow Electric Company? A. The changes that were made were these: the Arrow Company bought from the H. T. Paiste Company certain as-

1266 sets in the way of machinery and stock, moved to Hartford, and the goods were manufactured by the Arrow Company and sold to the Hart & Hegeman Company.

Q. I ask you to identify this paper which I hand you now. A. I identify this as a special meeting of the Board of Directors of the Arrow Electric Co. as of December 5, 1927.

Q. That is a copy of the minutes? A. A copy of the minutes.

Q. With the call at the head of it? A. Yes.

Q. Dated December 15? A. Yes.

1267

Mr. Haycraft: I offer this in evidence.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit No. 74.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 74".)

Q. This exhibit, which you have just now identified, shows the corporate action with respect to the purchase of the H. T. Paiste Company that you referred to a moment ago? A. That is correct.

1268

Q. Mr. Grier, weren't you elected president of the Arrow Electric Company in January, 1928? A. My recollection is that I was elected the president of the Arrow Company right after the merger, if I remember correctly.

Q. Will you look at this paper?

(Discussion off the record.)

(The last question was repeated by the reporter.)

A. I was elected president and treasurer of the Arrow Electric Company on January 20, 1928, correct.

1269

Q. And you were, according to your testimony that you gave here,— A. What other testimony?

Q. That you were vice-president during all that period of time. A. Yes, you will have to correct that testimony. I was president during part of the holding company period.

Q. I will ask you to identify this paper. A. I identify the special meeting of the Board of Directors, a copy of the minutes of March 16, 1928, including the call.

1270 *Edward R. Grier—Direct.*

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document is received in evidence as Commission's Exhibit No. 75.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 75".)

Q. Did the Arrow Electric Company purchase the porcelain plant of the Hart & Hegeman Manufacturing Company? A. They did not.

Q. Did you acquire it in any way? A. We pur-
1271 chased about $12,000 worth of assets, including certain machinery and certain raw material.

Q. What did you do with those? A. We had all the facts prepared for you when you asked us for them.

(Discussion off the record.)

Q. During the period of time, four or five years prior to October, 1927, had the Arrow Electric Company been paying dividends on its preferred and common stock? A. It had.

Q. Had it created a surplus during that period
1272 of time out of which to pay such dividends? A. It had.

Q. Will you state for the record about how much surplus you had on hand, say, on May 31, 1927? A. I would have to look at the records. I don't know.

(Witness consults papers.)

At a special meeting of the Board of Directors, held July 8, 1927, a balance sheet was presented to the Board of Directors showing a surplus of $782,931.48.

1273

Q. So that, would you say, that the Arrow Electric Company was in good financial condition at that time? A. It was.

Q. As president of the old respondent, what were your duties after October 27 up to January 1, 1929? A. Very little to do. Simply carried out the duties of the office.

Q. Did you act in an advisory capacity with the officials of the Hart & Hegeman Manufacturing Company? A. That is a pretty hard question to answer. We naturally discussed various matters. We naturally would. I certainly did not direct them at all, not as president of the holding company.

1274

Q. Why do you say that? A. Simply because I didn't.

Q. In other words, the result of entering into, or forming that holding company did not benefit the Arrow Electric Company at all so far as executives were concerned? A. We did not have anything to do with it at all. It is an entirely independent corporation.

Q. Then Mr. Williams, so far as you are concerned, carried on the business of the Hart & Hegeman Manufacturing Company— A. It is an entirely independent concern.

1275

Q. Did he ever ask your advice in respect to executive matters? A. I don't remember, but I imagine we discussed general business matters, as any two business men would.

Q. Did you make any changes with respect to your sales organization during that 15 months' period of time? A. I will make this statement, that we did not make any changes of any importance. We might have hired another salesman and let an-

1276 *Edward R. Grier—Direct.*

other salesman go, but I can't recall, other than that probability,—that is, minor changes.

Q. In October, 1927, at the time this holding company was formed, who had charge of your plant? A. Mr. Frank Alley, the superintendent.

Q. As the superintendent of all the manufacturing? A. Superintendent of all the manufacturing.

Q. Did you have a superintendent at the Washington works under him? A. No, the Washington plant was run entirely as an independent concern.

Q. Is Mr. Alley an engineer or simply a practical man? A. Practical manufacturer.

1277

Q. How long has he been with you? A. From what time?

Q. From October, 1927, back? A. Oh, let us say, about 20 years.

Q. Are you an engineer? A. Well, that is rather embarrassing. I did consider myself an electrical engineer years ago, but I am now a business man.

Q. In other words, you graduated from an electrical engineering school? A. I got a certificate that gave me the right to declare from the housetops that I am thoroughly capable of running a trolley car, if that is what you mean.

1278 Q. Who had charge of the sales? A. Mr. Harvey Pond.

Q. How long had he been your sales manager at that time? A. I should say ten years.

Q. Did you supervise both the manufacturing and sales policy of your company? A. I did.

Q. To what extent? A. Just the general standpoint, as an executive.

Q. In doing that, would you pass upon recommendations made to you by these practical men, or would you formulate the policies yourself and submit them to them? A. Both ways.

1279

Q. Did Mr. Pond and Mr. Alley continue in their respective capacities during that 15 months period of time from October 1927 to January 1, 1929? A. They did.

Q. Now, then, on or about January 1, 1929, on the formation of the so-called new respondent, the Arrow-Hart & Hegeman Electric Company: I show you Commission's Exhibit 51, and ask if you are acquainted with that agreement? A. I certify to the agreement, consolidation and merger between Hart & Hegeman Manufacturing Company and the Arrow Electric Company.

1280

Q. Exhibit 51? A. Yes.

Q. December 31, 1928? A. Yes.

Q. Did you take any part in the preliminary negotiations which resulted in this agreement which you have just identified?

Mr. Gross: I object, Mr. Commissioner, on the same lines of the irrelevancy of anything that has to do with the merger, on the ground of jurisdiction, which I already raised and I understand, sir, that all testimony relating to the merged company and transactions on and since January 1, 1929, will be covered by the general objection, without encumbering the record.

1281

Examiner Reeves: The Examiner so understood. It may be so noted on the record. The objection at this time will again be overruled.

Mr. Gross: And, as usual, an exception will be preserved each time.

Mr. Hayeraft: Please read the question.

(The last question was repeated by the reporter.)

A. Simply discussing it with the lawyers.

1282 *Edward R. Grier—Direct.*

Q. Did you discuss it with Mr. Williams? A. I don't remember that, but I think we certainly must have discussed it or talked with him about something.

Q. Can you testify now the various steps that were taken by the Arrow Electric Company, of which you were president? A. At what time?

Q. On or before December, 1928, at the time this merger was contemplated? A. No, I couldn't.

Q. I show you Commission's Exhibits 43, 44, 45 and 46, and ask if you recall those exhibits as being
1283 the action taken as indicated during the fall of 1928, to carry out the plan of merger? A. I identify these papers.

Q. I also show you Commission's Exhibits Nos. 48 and 49 and ask if you identify those exhibits as action taken by the Arrow-Hart & Hegeman, Inc.?

Mr. Gross: The old respondent.

Q. Yes, the old respondent. A. I identify these.

Q. I show you now what purports to be the minutes of the Arrow Electric Company—

Mr. Gross: That is Exhibit E?

1284 Mr. Haycraft: Yes.

Q. (Continuing)—the first of the special meetings of the Board of Directors, held on December 11, 1928, and then the stockholders' meeting, held on December 31, 1928, as found in Exhibit E, attached to the answer of the respondent to the supplemental complaint, and ask if you identify these minutes? A. I do.

Mr. Haycraft: I ask that the minutes of December 11 of the Board of Directors be marked

Commission's Exhibit No. 76 and the one of the stockholders, of December 31, No. 77.

Examiner Reeves: These documents referred to by counsel for the Commission will be considered in evidence as Commission's Exhibits 76 and 77.

(The documents were thereupon received in evidence and marked "Commission's Exhibits 76 and 77".)

Q. I now show you Commission's Exhibits 52 and 54, and ask if you identify those two exhibits. A. I do.

1286

Q. I now show you a paper and ask if you can identify it? A. I do.

Q. What is it? A. It is an unofficial call for the directors of the Arrow-Hart & Hegeman Electric Company.

Q. The new respondent? A. The new respondent; of a meeting on January 1, 1929, at the office of the Arrow-Hart & Hegeman Electric Company, at Hartford.

Q. And that is a copy of the notice that you sent out? A. Yes.

Q. Dated December 26, 1928? A. Yes.

Mr. Hayeraft: I offer it in evidence. 1287

Examiner Reeves: This will be received in evidence as Commission's Exhibit No. 78.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 78".)

Q. I show you two papers and ask if you can identify them? A. I identify this paper of July 1, 1929, sent—

Mr. Gross: January 1.

1288 *Edward R. Grier—Direct.*

A. (Continuing) January 1, 1929, sent to the stockholders of the Arrow Manufacturing Company and to the stockholders of the H. & H. Electric Company.

Q. And how were they further addressed? A. "Formerly the stockholders of Arrow-Hart & Hegeman, Inc., now in liquidation."

Q. What is the other one? A. Paper dated Hartford, Conn., January 1, 1929, to the preferred stockholders of the Arrow Electric Company and to the preferred stockholders of the Hart & Hege-
1289 man Manufacturing Company.

Mr. Haycraft: I offer those two in evidence.

Examiner Reeves: These two documents will be received in evidence as Commission's Exhibits 79 and 80.

(The documents were thereupon received in evidence and marked "Commission's Exhibits 79 and 80".)

Q. Can you state for the record just what was done in the dissolution, you might say, of Hart & Hegeman, Inc. and the organization of the new re-
1290 spondent? A. What do you mean, what was done?

Q. What happened to the stock that was held by the stockholders of the old respondent, the Arrow-Hart & Hegeman, Inc.?

Mr. Gross: I object to the question as calling for a conclusion of law. As a matter of fact, it does not sequence in on account of the two subsidiaries that came in. The agreement recites what was done, and I say the papers speak for themselves.

(Discussion off the record.)

1291

Examiner Reeves: The objection will be overruled.

(The last question was repeated by the reporter.)

A. I can't answer that question without going over the record. I can't remember all this.

Q. This agreement, Commission's Exhibit 51, was carried out, so far as you know? A. So far as I know it was carried out.

Q. Did you own stock in the Arrow-Hart & Hegeman, Inc., the old respondent? A. I did.

1292

Q. Did you turn that in for stock in the Arrow Manufacturing Company? A. I owned the stock through a Trust Company. I don't know what they did with it.

Q. Do you still have it in your possession? A. The Trust Company had entire charge of my orders, and I have not followed up what they did with it.

(Discussion off the record.)

Q. Now, then, after January 1, 1929, you became president of the consolidated company, the new respondent in the case? A. I did.

1293

Q. Who were your other officers? A. The Vice-president, Mr. Perkins; another vice-president was Mr. Samuel P. Williams. I can't remember that without the record. Wait a minute, I will read that.

President, Edward R. Grier,
Vice-president, Samuel P. Williams,
Vice-president, Benjamin C. Perkins, and Monroe Guett.
Treasurer, Samuel P. Williams.
Secretary, Benjamin C. Perkins.

1294 *Edward R. Grier—Direct.*

Thomas A. Inch was appointed Comptroller of the company.

Q. What were his duties? A. With special duties that may be assigned to him from time to time by the president.

Q. Who became your Board of Directors? A. The Board of Directors were named in Exhibit 51.

Q. Were there any changes made after the company was organized, in the Board of Directors? A. I don't know, I will have to look it up. Shipman
1295 and Gross were added, as shown in the minutes, Exhibit 64.

Q. In setting up your organization of the new consolidated corporation, whom did you appoint as your sales manager? A. There were no changes. I remember after the new respondent went into effect I don't know of a single change that was made in personnel. The changes came later.

Q. When did they come and what were they? A. So few changes that I can give them to you. Mr. Pond was made general sales manager.

Q. He had been your sales manager for years? A. Yes. He probably received that position prob-
1296 ably a year ago. Mr. Frank Alley was made from superintendent of the Arrow Company to general superintendent of the new company.

Mr. John R. Cook was made vice-president and general manager.

Mr. Pond was elected at one of the later meetings.

Mr. Inch, the Comptroller, was changed to treasurer of the company. Wait a minute. Mr. Williams resigned the office of treasurer and Mr. Inch was made treasurer. I will refer to the papers.

1297

(Discussion off the record.)

The Witness: This is taken from the records of the Board of Directors' meeting of March 18, 1930:

John R. Cook, vice-president.

Harvey C. Pond, vice-president.

Charles A. Ten Eyck, to assistant treasurer.

E. Bosworth Grier, secretary.

W. H. Harrington, assistant secretary.

Mr. Williams resigned as treasurer. Mr. Benjamin C. Perkins resigned his office of secretary. Thomas A. Inch resigned his office as assistant secretary. Those are the changes in the officers.

1298

Q. Beginning with Mr. Cook, had he been general manager? A. He had not.

Q. When was he made general manager? A. About a year ago.

Q. What were his duties prior to that time? A. He was manager of the appliance department.

Q. Of which company? A. He was manager of the appliance department of both companies—of the new company, the new respondent. He was in charge of the appliance business.

1299

Q. Prior to January 1, 1929? A. He was in charge of the sales of the appliance business of the Hart & Hegeman Manufacturing Co.

Q. Now, he is in charge of the appliance department— A. Now he is general manager.

Q. What do his duties constitute? A. That is a pretty hard question for me to answer—the duties of a general manager, what the duties of the general manager are, according to the term.

1300 *Edward R. Grier—Direct.*

Q. You are president? A. I am president. He reports to me.

Q. What does he include in his work? A. Naturally, he has charge of the general business of the corporation.

Q. Does it include manufacturing? A. Manufacturing, as well as selling.

Q. Mr. Williams, what are his duties now? A. Mr. Williams is practically the vice-president, and reports to me.

Q. He is the executive vice-president? A. Yes.

1301 Q. Does Mr. Guett have any position? A. Mr. Guett is vice-president of the new organization.

Q. What are his duties, as such? A. His duties as designing engineer and in charge of the designing end of the company.

Q. Mr. Alley has charge— A. He is general superintendent of the company.

Q. As such, he has charge of the general factory? A. Charge of the general factory.

Q. To whom is Mr. Pond responsible? A. Mr. Pond is responsible to me and also to Mr. Cook, in the general sense of the term.

Q. What other changes were made during that

1302 time? A. What kind of changes?

Q. In the personnel—I mean of the executive type. A. I think that covers it.

Q. How about Mr. Everest? A. Everest has the same position he has had right along. He is in charge of the jobbing end of the Hart & Hegeman Division sales.

Q. Who is in charge of the jobbing end of the Arrow business? A. Mr. Pond.

Q. Mr. Pond, then, is not only general sales manager, but— A. Mr. Pond is general sales manager and Mr. Everest is sales manager of the Hart &

1303

Hegeman end, and reports to Mr. Pond on general matters.

Q. Does Mr. Cook have charge of the appliance department of both divisions? A. Yes.

(Discussion off the record.)

Examiner Reeves: The hearing will be adjourned to 2 o'clock p. m.

(Whereupon, at 12:20 p. m., a recess was taken to 2 p. m.)

1304

AFTER ADJOURNMENT—2 P. M.

DIRECT EXAMINATION (Contd.) BY MR. HAYCRAFT:

Q. By both divisions, I mean the Arrow Division and the Hart & Hegeman Division of the present corporation. A. Yes.

Q. How is the work divided between those two divisions? A. The work is divided—the division is commercial.

Q. And does each commercial— A. We have one set of books.

Q. Take, for instance, the manufacturing plants 1305
that you now operate. Do they manufacture the same products, but stamp different brands on them? A. We have no division from a manufacturing standpoint now. There is one division, so I can't answer that question.

Q. That answers that. A. We have no division from a manufacturing standpoint now. There is one division, so I can't answer that question.

Q. That answers that. The manufacturing plant makes up the orders received? A. No, sir, we carry

1306 *Edward R. Grier—Direct.*

stock. The special stuff is made on orders received.

Q. Take the superintendent of the plant, Mr. Alley: how does he know how many sockets or receptacles are manufactured? A. They have a production department, of which Mr. Carrol is in charge.

Q. The production this year depends on the sales last year? A. Yes.

Q. And Mr. Alley and Mr. Carroll determine how many thousand Arrow plugs and Hart & Hegeman
1307 plugs, sockets, plates, switches and so on, would be manufactured during a given period of time? A. Yes.

Q. How do you advertise now? A. Advertise as two divisions.

Q. The name, with two divisions? A. Yes, of course we have to, the Arrow Division of the Arrow-Hart & Hegeman Electric Co.

Q. Is the expense allocated between the two divisions, or is that simply an overhead expense in a general way? A. Taken in a general way.

Q. Is there any particular expense that is set aside for advertising for the Arrow brand, for in-
1308 stance, or the Hart & Hegeman brand? A. Not when advertising.

Q. In the last analysis, at the present time the Arrow-Hart & Hegeman Electric Company is engaged in the manufacture and sale of electrical wiring devices under two brands? A. Under two brands. One company and two brands.

Q. From time to time, as new articles are added, do you sell them under both brands? A. As a rule, the new articles are under the Hart & Hegeman Division, because most of our new stuff is scientifically designed stuff, mostly on the switch line.

1309

Q. You are pushing your business that way now? A. Yes.

Q. Are you getting out any articles that are branded or stamped Arrow and H. & H. together—both names? A. I can't answer that question, but I think we have two brands. Can I refer to Mr. Cook on that? There are two brands. It may be some minor thing that we make two dies, some little thing.

Q. And Mr. Guett, who is in charge of your designing, he is working, of course, for the one company? A. One company has charge of the designing of both divisions. We have no two divisions when it comes to manufacturing.

1310

Q. So far as you are concerned, as an executive of this corporation, it makes no difference to you which brand leads in point of sale, so far as the profits are concerned? A. It does not make any difference about profit.

Q. If more Hart & Hegeman business is done than Arrow business. A. I might say that if one division gets ahead of the other, it will stimulate the other one.

Q. You as an executive encourage rivalry between the two? A. The highest we can do, because it is common sense.

1311

Q. How about the price at which these various articles are sold? That is now entirely under your supervision. A. Any important decision that would come up, would be brought to me. I don't go into all the details of all the prices.

Q. Upon whom do you rely for recommendations? A. Mr. Cook and Mr. Pond.

Q. Cook for the special appliances? A. Yes, and once in a while he comes to me and talks to me about it. As a rule, he makes the prices.

1312 *Edward R. Grier—Direct.*

Q. I want you to identify this catalogue. A. I do.

Q. What is it? A. That is a catalogue of the Arrow Division of the Arrow-Hart & Hegeman Electric Co. It is so stated, I think.

Mr. Haycraft: I offer it.

Mr. Gross: Put the date on it.

The Witness: Catalogue No. 21, November, 1929.

Examiner Reeves: This catalogue is received

1313 in evidence as Commission's Exhibit No. 81.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 81".)

Q. I show you another catalogue and ask if you recognize that? A. This is a catalogue of the Hart & Hegeman Division.

Q. The same date? A. The same date exactly. This is a catalogue of the Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Co., issued November, 1929.

Mr. Gross: With inserts?

1314 The Witness: Yes, with inserts. Both of them have inserts.

Examiner Reeves: This is received as Commission's Exhibit 82.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 82".)

Q. Who in your organization has charge of the preparation of these catalogues? A. Mr. Edward Bosworth Grier and Mr. Rollin Peck. They work together.

Q. For both divisions? A. Yes, they work together for both divisions. 1315

Mr. Haycraft: I think that will be all.

CROSS EXAMINATION BY MR. GROSS:

Q. In answer to that last question, Mr. Grier, you meant to say that Edward Bosworth Grier prepared the work for the Arrow Division and Mr. Rollin Peck for the Hart & Hegeman Division? A. Yes, sir.

Q. They were not working together on the same catalogue? A. They help each other, but one is advertising manager of the Hart & Hegeman Division and the other is advertising manager of the Arrow Division. 1316

Q. Will you give us a little statement of the history of the Arrow Electric Co., as to when it was incorporated, and how long you have been with it; the general history, as we have had the other day from Mr. Williams for the Hart & Hegeman Manufacturing Company. A. In detail?

Mr. Haycraft: I must object to that as not proper cross examination, not that I object to its being brought out. 1317

Examiner Reeves: Objection overruled.

Q. Start with the organization; who started it, when it was started, and where? A. I should think about 1903 the corporation was started under the name of the Perkins Corporation.

Q. By whom? A. By Mr. Charles G. Perkins. In about 1906 I came with the organization as vice-president; and after I came with them we changed the name to the Arrow Electric Co.

1318 *Edward R. Grier—Cross.*

Q. Where was it first operated? A. It was first operated here in Hartford; always has been in Hartford.

Q. And its corporate existence has continued from that time until this? A. To the present time.

Q. What was the nature of the business when it first started? A. Manufacturing switches and sockets.

Q. And then expanded into other lines? A. General wiring device lines.

Q. When did it come into the present plant on
1319 Hawthorne St., approximately? A. I should think about 10 years, roughly—12 years ago. I think I had better correct myself: 12 or more.

Q. Whether or not the form in which the holding company was incorporated was devised for the purpose of preserving the good-will value of the brands of the two companies.

Mr. Hayeraft: That is objected to as incompetent, irrelevant and immaterial and as not within the issues in this case.

Mr. Gross: I claim it, if your Honor please, as proper cross examination of the transaction
1320 which has been gone into in full on the examination in chief by the attorney for the Commission.

Mr. Hayeraft: I do not object to it on that ground. I object to it on the ground that it calls for an answer that has nothing to do with the issues in this case: the intention or purpose of the parties to the forming of the holding company.

Mr. Gross: It seems to me that a man's purpose and intention is very material.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

Mr. Gross: Will you read the question?

(The last question was repeated by the reporter.)

A. It was.

Q. When the holding company was organized, was the sole plan to effectuate a manufacturing organization?

Mr. Haycraft: That is objected to on the same ground.

Examiner Reeves: Objection overruled. 1322

Mr. Haycraft: Exception.

A. It was.

Q. Will you state some of the economies which were accomplished; for instance, I think you testified this morning that the purchase by Arrow of the machinery, tools, dies and inventory of the Paiste Company—you testified to that on examination in response to Mr. Haycraft's questions, didn't you? A. Yes.

Q. Will you state any other manufacturing economies during that period of years? A. The Hart & Hegeman Division manufactures switch plates, and 1323
they had automatic machinery with which to manufacture them, and we manufactured them by hand, and the cost of production was very great, and we bought the plates from the Hart & Hegeman Company to save money.

Q. And that was a commercial transaction? A. We paid for them, just as any other company would purchase from any other foreign corporation.

Q. As a matter of fact, you might buy parts from any other manufacturer in the business? A. Yes, as we did.

Q. And likewise, in turn, you probably make parts and sell to other manufacturers in the trade? A. We manufacture and we buy from other manufacturers.

Q. Now, was there any other economy in the matter of making parts on your automatic screw machines during that period for the Hart & Hegeman Manufacturing Company? A. They had no machinery to make them. We made the parts here and sold them to them in the ordinary way.

Q. In the same way as to any other corporation?

1325 A. Yes, sir.

Q. It was testified by Mr. Williams on his testimony yesterday that Hart & Hegeman Manufacturing Company was furnished with skillful assistants in the matter of the statistical department. Will you tell us about that? A. We furnished a number of employees. We furnished Mr. Fagan, Mr. Wilmot, and one of the brightest girls in the place, Miss Smart, all skilled people, and they went into Hart & Hegeman, and went on their payroll, to assist them.

Q. For the purpose of developing their statistical— A. Statistical and production departments. They were very weak.

1326 Q. During that same period of 15 months of the old respondent, what was done with reference to production of porcelain in the interest of manufacturing economies? A. The Hart & Hegeman shut down their plant, which was rather expensive, and they purchased from the Washington Porcelain Company, a subsidiary of Arrow, the same as they would buy it from anybody else.

Q. And did your subsidiary buy some of the inventory or other equipment of the Electric Porcelain & Manufacturing Company? A. They bought

$4,000 worth of the material, and some machinery, and we paid for it in cash.

Q. After that period, the Washington Porcelain Company, which was then a subsidiary of the Arrow, made the porcelain parts for both the Hart & Hegeman Manufacturing Co. and the Arrow Electric Company? A. Yes.

Q. During the period of 15 months of the old respondent, were the two companies, the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co., conducted entirely as separate and distinct corporations? A. They were.

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Q. Were there separate officers and were they maintained as separate units? A. Separate organizations entirely.

Q. And the Hart & Hegeman office remained down at the old plant? A. Absolutely.

Q. During the period of 15 months of the holding company, whether or not the competition in the trade and in the sale of their products between the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co. was maintained as intensively and as completely as prior to the organization of the old respondent.

1329

Mr. Haycraft: That is objected to if the Examiner please, as a conclusion which the Commission and the Court must draw, and not by a witness in a proceeding of this kind.

Mr. Gross: I claim it; that the men who are doing the work are the men who can draw the conclusions to be drawn and make statements of fact as to how they operated these concerns.

Examiner Reeves: The objection is sustained.

Mr. Gross: Will you note an exception, please.

1330 *Edward R. Grier—Cross.*

Q. During the period of the holding company, of 15 months, did each of the two companies maintain a separate and distinct sales organization? A. It did.

Q. During that period of time, did each of them maintain their separate forces of salesmen in the field? A. They did.

Q. Was there any let-down in the number of men or in the expense of selling during that period? A. There were more added, and expenses increased.

Q. Did the holding company, the old respondent,
1331 of which you were president, in any way during its corporate existence of 15 months, by vote of its stock, or by act of its officers or directors, or in any other way, attempt or undertake to dictate the sales policy or dictate questions of sales or questions relating to competition between the two selling organizations of the companies, the Hart & Hegeman Manufacturing Company and the Arrow Electric Company?

Mr. Haycraft: That is objected to, if the Examiner please. The question as worded is entirely too broad. Anything done by the cor-
1332 poration would be reflected in its minutes.

Mr. Gross: He is the president of the company, and I claim the question.

Mr. Haycraft: The records of the corporation are the best evidence of what may have been done by that corporation, and not what this witness may recall.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

Q. Did you as president of the old respondent, the holding company, during the 15 months, in any

1333

way attempt to dictate the sales policy or dictate any question as to the sales with reference to competition between the two companies, the Hart & Hegeman Manufacturing Co. and the Arrow Electric Company? A. I did not.

Q. Did any one representing the old respondent, the holding company, during that period of 15 months, attempt to interfere in the question of the sales policy or attempt to dictate in the sales policy of the two companies, the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co.? A. They did not.

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Q. I call your attention to Exhibit 39, being the minutes of a special meeting of the Board of Directors of the old respondent, the holding company, and call your attention to the statement therein, that you presented, in accordance with Article 7 of the company's by-laws, a list of directors for the constituent companies, and the action of the Board, voting that the directors of the Arrow Electric Co. Board should be Edward R. Grier, Benjamin C. Perkins, Charles A. Ten Eyck, Mr. Harvey C. Pond, Mr. Arthur L. Shipman, Mr. Daniel J. Glazier, Mr. Charles G. Perkins, and for the Hart & Hegeman Board, Mr. Judson H. Root, Mr. Robert C. Buell, Mr. George H. Burt, Mr. Williams, and Mr. Gross, and I ask you whether or not those were the same boards that had represented the companies before the organization of the holding company? A. They were.

1335

Q. When did the Arrow Electric Co., approximately, adopt its trade-mark, which is now well established, to market its goods? A. 25 years ago —about 22 or 23 years ago.

Q. And that has been used continuously as designating the articles made by that company? A.

1336 *Edward R. Grier—Cross.*

Yes, and it has been fought a great deal in the courts.

Q. And sustained? A. Yes, and sustained.

Q. Whether or not the Arrow Electric Co., of which you were the chief executive, placed great value, for sales purposes and for good-will in the trade, upon the establishment, protection and preservation of that trade-mark. A. I spent at least $50,000 protecting it. It seems to be so popular that everybody tries to use it, and we have had a great many decisions in our favor. We consider it
1337 extremely valuable.

Q. Will you describe, briefly, for the record, what that tradegmark consists of? A. It consists of an arrow, the symbol of it, and also the word "Arrow" and that is our principal trade-mark.

Q. During the period of the 15 months covering the corporate existence of the old respondent, did you, as chief executive of the Arrow Electric Co., do anything, by order or formulation of policy, to lessen competition and sales as between your company and the Hart & Hegeman Manufacturing Company? A. I did not.

Q. Was there, in your opinion, during that pe-
1338 riod, any lessening of competition between your company and the Hart & Hegeman Manufacturing Company?

Mr. Haycraft: That is objected to on the same ground.

Examiner Reeves: Objection sustained.

Mr. Gross: Will you note an exception.

Q. Did you, as the chief executive of the Arrow Electric Co., issue any orders which would in any way keep the Arrow salesmen from soliciting or

endeavoring to procure business from persons who might be known generally as customers of the Hart & Hegeman Manufacturing Company? A. I did not.

Q. Whether or not, so far as you know, any such instructions were given to salesmen of the Arrow Electric Company during that time, to keep away from Hart & Hegeman customers?. A. I know of no such orders given.

Q. Do you believe that there were any such orders given?

Mr. Haycraft: I object to what the witness believes, as incompetent, irrelevant and immaterial. 1340

Examiner Reeves: Objection overruled.

A. No, I do not believe.

Q. Was there any understanding whatever between you as chief executive of the Arrow and its selling organization, to your knowledge, and the selling organization of the Hart & Hegeman Company by which they would keep away from each other's customers? A. There were not.

Q. Was there any lessening in sales effort on the part of the Arrow Electric Co. during the period of 15 months, in any way? A. It increased, not lessened. 1341

Q. On the contrary, did you, as the chief executive of the Arrow Electric Co., in any way stimulate that competition? A. I did.

Q. From your experience, what would have been the effect on the aggregate sales of the two companies, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., if, upon the organization of the holding company, the two respective

1342 *Edward R. Grier—Cross.*

trade-marks or brands "Arrow" in the one case and "H. & H." in the other, had been discontinued and a new brand or brands, unknown to the public, had been substituted?

Mr. Haycraft: Just a minute. That is objected to on the ground that it is incompetent, irrelevant and immaterial to the issues in this case, and it sets up an issue which is entirely foreign and is not even contemplated at all in the complaint. There is nothing in the com-

1343 plaint or anything in the case, or anything on the direct examination of this witness, which hints that these trade-marks should be done away with or a new one adopted. We are going into a field of prophesy and a field of problematic conjecture, which is entirely foreign to the issues in this case.

Mr. Gross: If your Honor please, the purpose of this is this: we propose to show that the whole purpose and the whole result of the organization of the holding company was to preserve competition and to stimulate the sale of these respective brands to those persons who

1344 required those brands.

In other words, I am clearly entitled to show that far from violating the Clayton Act, or far from intending to do anything contrary to the laws of the United States, we did devise an organization which carried out the entire spirit of the Government, that we should maintain competition and stimulate competition, and I propose to show the particular form in which we have gone ahead in order to preserve the large sales of the two organizations, and also that if we had not done it in that way we would

have done it in the way the Government urges. I claim the question on these grounds.

Mr. Hayeraft: There isn't any objection, of course, to bringing out the facts as to what has happened after the transaction took place, but this going into conjecture and what might have happened is entirely too far removed from the issues in this case.

Examiner Reeves: The objection is sustained.

Mr. Gross: May I say this, that the question was admitted yesterday almost verbatim on 1346
Mr. Williams' examination. May I have an exception?

Examiner Reeves: An exception will be noted.

Q. During the 20 years or more that you have had your brand, "Arrow", on your products of this company, have you built up a large number of jobbers, and below the jobbers, a large number of consumers, for this word, who have placed great faith upon the Arrow Brand and have exclusively insisted upon Arrow goods? A. We have.

Q. Did you find during the period of 15 months 1347
that the holding company, the old respondent, operated, that you still preserved that clientele of people who, both in the jobbing trade and in the ultimate consumers, who still demanded Arrow goods? A. We did.

Q. Did you find that that has been maintained even since the merger, on January 1, 1929, that there are those large number of persons who insist upon Arrow goods? A. I have.

Q. Did you find that the sales effort during the period of 15 months of the old respondent increased that demand and increased that clientele?

1348

Mr. Haycraft: That is objected to, Mr. Examiner.

Mr. Gross: It is perfectly relevant on your own objection to my other testimony.

Mr. Haycraft: It must be based on a conclusion which must be based upon facts, and which are not in the record, and which, if it should be determined, must be determined by the Commission from the facts as they are established, and it is taking away from the Commission and the Court its function of drawing

1349 the conclusion.

Examiner Reeves: Read the question:

(The last question was repeated by the reporter.)

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

A. Yes.

Q. Is the same thing true of the situation since the merger on January 1, 1929? A. It is.

Q. Prior to the organization of the holding company, on or about October 6, 1927, had the Arrow Electric Co. much export business, as compared

1350 with the Hart & Hegeman Manufacturing Company? A. Very little.

Q. Prior to October 6, 1927, had the Arrow Company in its organization any man of the inventive and designing genius of Monroe Guett?

Mr. Haycraft: That is objected to as improper cross examination.

Mr. Gross: I claim it as showing one of the things they got from the transaction.

Examiner Reeves: Overruled.

A. No, we had not.

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Mr. Haycraft: I wish to add to that objection that it is incompetent, irrelevant and immaterial and not within the issues in this case. Exception.

Mr. Gross: That is all, Mr. Grier.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. With respect to the economies which were accomplished as the result of the holding company, I believe you listed one that the H. & H. sold plates to the Arrow? A. Yes.

1352

Q. You say you bought them as you buy from anybody else? A. Absolutely.

Q. What did the holding company have to do with that? A. Nothing.

Q. Then, that was not an economy that came about by the formation of the holding company? A. That is a rather complicated question. I will have to think of it a minute.

(The preceding questions and answers in the redirect examination were repeated by the reporter.)

1353

A. (Continued) May I change my testimony? I will say that I can't express myself exactly as I want to express myself. The fact that we had a holding company,—that is a technical question. The holding company had nothing to do with that directly, but it might have been sympathetic. We would rather go to the Hart & Hegeman instead of somebody else. That is, while the holding company was not directly responsible, it might have been indirectly, through sympathy.

1354 Q. How was it brought about? Did you, as president of the holding company, say to the president of the Arrow Electric Co., "I want you to do thus and so"? A. I certainly did not, no. I went to the Hart & Hegeman and said, "I want to buy plates from you".

Q. You could have done that before any holding company was organized? A. Yes, we might have done it before.

Q. How about the porcelain? Was that brought about in the same way? A. Indirectly.

1355 Q. That is, you bought the porcelain—rather, they, the Hart & Hegeman bought it from you? A. The Porcelain Company sold it to us, and they also sold it to Hart & Hegeman.

Q. They were controlled by your organization? A. By the Arrow Company.

Q. Did you say to the officials of the Washington Porcelain Company, "hereafter I want you to sell them porcelain receptacles", and then to the Hart & Hegeman, "I want you to buy from them"? A. I went to the Hart & Hegeman and said we could make the prices cheaper on the porcelain.

Q. That is what you would say to any customer.

1356 A. Exactly.

Q. What did the holding company have to do with that? A. Nothing, directly.

Q. Then, that so-called economy was not brought about by the holding company? A. I think you are splitting hairs.

Q. No, I am not. A. Well, it is impossible to answer that directly.

Q. Did you exercise your authority as president of the holding company and say to the Hart & Hegeman organization, your subsidiary organization, that hereafter, "you shall not manufacture any por-

celain receptacles, but shall buy them from the Washington factory, which is controlled by the Arrow Electric Company"? A. Will you read the question, please? I didn't get that.

(The last question was repeated by the reporter.)

A. I did not.

Q. The sale of the porcelain parts to the Hart & Hegeman Company might have been done by the Arrow Company without the formation of the holding company? A. Might have. 1358

Q. In other words, it was not necessary to form a holding company to bring that about. A. We sold to other people just the same as we did to the Hart & Hegeman Co. We sold a large amount to competitors.

Q. Competitors who are not equipped, fortunately, as well as you. A. No. I think we sell around $200,000 or $300,000 worth to competitors.

Q. Well, that is done right along. A. Yes, of course it is done right along. It is common sense.

Q. You testified on cross examination that you had never attempted to dictate the sales policy of the Hart & Hegeman organization during the 15 months period, from October, 1927 to January, 1929. A. The sales policy of the Hart & Hegeman was run by their president, Mr. Williams, and not by me. 1359

Q. What would you have done if Mr. Williams had deemed it necessary to make a severe cut in the prices on the commodities he was selling? A. In all possibility, we would have to meet it, as a competitor.

Q. You would have said nothing to him about it? A. Not necessarily, no.

Q. I am going to find out just what authority you could have exercised or would have exercised as president of the holding company over the subsidiary companies. A. I exercised no power of control. I never used the holding company for that.

Q. Why? A. Because it was a holding company, and not a manufacturing company. As I understand it, the holding company held the stock. It did not dictate the policy of either company.

1361 Q. And why? A. Simply because it wasn't common sense to.

Q. It wasn't because you lacked the power? A. No, I suppose no. We never exercised it.

Q. With respect to the stimulation of competition, just what did you do to stimulate competition between the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. during that 15 months period? A. That is an easy question to answer. We are a pretty proud company, and our crowd were very anxious to beat them. Their pay did not depend on what Hart & Hegeman did, but what we sold. Therefore, the rivalry was very great. In

1362 fact, I want to make the statement that in one of the two Pacific Coast offices, two of the men would not speak to each other, and when I saw the manager I said to him, "That is a horrible condition. You must do something about it; can't you transfer one of them to Denver?", and he did. That is to show how far competition went.

Q. Did that go to the extent of making a better price or a larger discount? A. Salesmanship.

Q. What do you mean by that? A. Hard work.

Q. What do you mean by that? What is it that induces a man to buy your goods? A. Quality.

1363

Q. He doesn't pay any attention to price? A. Of course.

Q. Is the price an important element? A. Sure it is. If Hart & Hegeman cut their price, we would cut ours.

Q. Did you cut your price during that 15 months period of time to get business from the Hart & Hegeman Manufacturing Company? A. I will answer that question this way: the market conditions during that 15 months period were terrible. There were 100 competitors, and we had to meet the market conditions; prices went down and down,—a half a million dollars. I can prove that by records. All we had was competition.

1364

Q. Didn't you cut your price to take business away from the Hart & Hegeman Company? A. I don't think we did.

Q. Did you offer larger discounts than the Hart & Hegeman were allowing? A. The discounts were the market discounts to meet market conditions. When one went down the other went down.

Q. Did you offer, in addition, any better service? A. I think our service was very much better.

Q. In what way? A. On deliveries.

1365

Q. You also stated that during that period of time the value of your trade mark, the Arrow trade mark, was increased and the demand by the clientele was increased. Just how did you arrive at that conclusion? A. My records. Our business increased in volume; more articles sold. Prices went down, and we sold more even then.

Q. In 1928, it increased over 1927? A. My impression is that they increased right along, steadily. I would have to verify it by the records. The business was climbing up like that (indicating).

1366 Q. If the records were the other way, would you want to qualify your answer? A. No, because I think our goods are getting more popular every day.

Q. That is what you took into consideration when you made that answer? A. Yes, sir. Of course, they are affected by other conditions. Somebody else might have got a different type of goods which are popular,—although our trade mark might be good.

Q. Would you say that the increased clientele
1367 would be reflected by the increased number of customers than you have? A. I imagine it would be.

Q. Were the increased amount of sales— A. No, you can't go by individual customers. There are thousands of reasons why you take one new customer on and lose another one.

Q. I just want to know what you had in mind when you answered that the value of your trademark had been increased through the increase in the clientele. A. I will go by the sales first. I know we were getting stronger all the time; we were more popular, more thought of, and my opinion is, —I haven't seen the records—I think it was sub-
1368 stantiated by an increase of sales.

Q. Just refresh your recollection on that point. Take Washington, down around in the southern territory, south of Washington. What would you say about your increase— A. You can't compare one section with another section, because there are too many things entering into it. Suppose you have a very popular man down there and your Boston man is not; the individuality is very different in salesmen. Maybe the cotton crop goes bad down there, and in the west there were times when the western business went right down. It wasn't due to any one

1369

set of conditions. The real factor is the increase of sales, and that is the dominant factor.

Q. Would not your increased sales also reflect an increase in the consumption of a trade-mark already established? A. I am taking the consumption of the United States as a whole.

Q. Might not an increase in sales indicate an increase, as well, of a trade already established, and not mean an increase in clientele? A. As a rule the increase of business will answer that question.

1370

Mr. Haycraft: Now, Mr. Examiner, after the questions and answers that have been received from this witness with respect to the answer that he gave on cross examination, I wish at this time to move to strike out the question and answer which I objected to at the time he gave that conclusion which could not be determined by this witness upon facts which were not in the record, because I think you can readily see how unreliable a conclusion of that kind must be in determining the issues in this case.

Examiner Reeves: The motion to strike is denied.

Mr. Haycraft: Exception. I think that is all.

1371

RECROSS EXAMINATION BY MR. GROSS:

Q. In determining the popularity of brands, state whether it is the number of pieces sold, rather than the total business that is received, that is the determining question of the value of the brand. A. The price during that period went down so much that it took probably 10 to 15 per cent more tonnage to equal the business.

1372 *Edward R. Grier—Recross.*

Q. You were asked by counsel for the Commission whether if you or Hart & Hegeman during that period had reduced the price—

Mr. Hayeraft: I didn't ask him that question.

Mr. Gross: Whether he ever cut prices to get the business from Hart & Hegeman.

Mr. Hayeraft: That is it.

1373 Q. If any of this would have an effect upon competitors in the country. A. It would have gone down.

Q. Prices are based on market conditions? A. Yes.—on shelf goods. No question about it.

Q. With reference to economies, which he says were not produced by the holding company.—who owned all the common stock of the two companies? A. The stockholders.

Q. Who owned the common stock of these two companies, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Company? A. The holding company.

1374 Q. Therefore, any increased profits for either company would have resulted to the benefit of the holding company? A. Yes.

Q. By purchasing the Paiste machinery and parts, and thereafter manufacturing sockets for Hart & Hegeman, whether or not thereby the profits of the Arrow Electric Co., by this increased production, were increased? A. They were.

Q. Which, in turn, would reflect back to the owners of the common stock? A. Absolutely.

Q. The same way, the manufacture of plates by Hart & Hegeman would have the same effect. A. Absolutely.

Q. In the same way, the manufacture of parts on your automatic screw machines, would have the same result. A. Yes. 1375

Q. Whether or not the Washington Porcelain Co., your subsidiary company, could show better results by manufacturing porcelain for the two companies, rather than for the one. A. It gave larger volume, and therefore was a greater economy.

Mr. Gross: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

1376

Q. You stated, I believe, on cross examination, that any profit which might result from the operation of these two subsidiary companies, would go to the benefit of the stockholders of the holding company. A. Yes.

Q. And a loss would also injure the holders of the stock. A. They are one.

Q. I would like to have you produce for the record a statement as to the profits that actually accrued out of the economies which have resulted as a result of the transaction which we have been discussing here: that is, namely, the sale by the Hart & Hegeman Manufacturing Co. to the Arrow Electric Co. of plates, and the sale by the Arrow Electric Co. to the Hart & Hegeman Manufacturing Co. of porcelain parts. A. I will prepare that record and submit it later. 1377

(At this point a short recess was taken.)

1378 *Haynes L. Everest—Recalled—Direct.*

HAYNES L. EVEREST, recalled.

Mr. Gross: I desire to call the attention of counsel for the Commission to the fact that in a compilation of the statistics, as to sales in 1926 and 1927, on the basis of which Mr. Everest was testifying yesterday, we find after the close of testimony, in talking with him and Mr. Cook that the compilation is inaccurate, and we therefore desire to call the attention of counsel for the Commission to the fact, and we
1379 are furnishing him with revised figures, so that he may make the record straight as the basis for further examination of Mr. Everest.

DIRECT EXAMINATION BY MR. HAYCRAFT (Cont.):

Q. With that statement made by counsel for respondent, I shall call Mr. Everest's attention to the totals he gave for the New England territory for the years 1926 and 1927, and ask whether or not those totals include direct sales to appliance manufacturers in those two years? A. The sales do not include direct sales to manufacturers, as I have since found out.

1380 Q. Therefore, your answer yesterday to the question which I propounded with respect to sales to manufacturers by the Hart & Hegeman Co. during 1926 and 1927 was inaccurate, when you said that there were no sales. A. It was.

(Discussion off the record.)

Q. What, then, would be the total sales of the Hart & Hegeman Manufacturing Co. to customers

of all kinds during the years 1926 and 1927, including direct sales?

Mr. Gross: In that territory?

Mr. Haycraft: In the New England territory.

A. $339,569.

In 1927, $344,474.

Q. Yesterday I asked you whether or not the increase in the volume of sales in 1928 over 1927 was attributable to sales to manufacturers, and you stated that it was. Would that answer still hold 1382
good so far as the New England territory is concerned? A. It would.

(Discussion off the record.)

Q. Now, turning to the New York territory, which we were discussing at the close of the hearing yesterday, I will ask you whether or not the total figures which you read into the record at that time, covering the sales of the Hart & Hegeman Manufacturing Co. to its customers in the New York territory, which you then described, namely, $1,010,373 in 1926, and $927,747 in 1927, include 1383
direct sales to manufacturers? A. They do not.

Q. So that the grand total in 1926 would be what? A. Including direct sales, $1,123,141.

Q. And in 1927? A. Making a grand total of $1,161,610.

Q. In your testimony yesterday, when I asked with respect to the increased volume of sales in 1928 and 1929, as compared with 1927, you attributed it to the sale of goods to manufacturers. Would that answer still hold true in consideration

1384 *Haynes L. Everest—Recalled—Direct.*

of the additional data which you produced today? A. Yes, I should say it would.

(Discussion off the record.)

Q. Mr. Everest, who were your principal jobber customers in Baltimore for the Hart & Hegeman Manufacturing Company in 1927? A. In 1927?

Q. Yes. A. Greenfield Electric Co., Shephard-Fluharty Electric Co., and the Baltimore Electrical Supply Co.

1385 Q. Now, there were other distributors in that territory, but those are the ones that you principally sold to? A. Correct.

Q. Were any of them exclusive distributors of your product? A. None of them. We have no such thing as an exclusive distributor.

Q. By that you mean you do not prohibit him from handling any other lines? A. To the best of my knowledge we have no distributor who handles our goods exclusively.

By Mr. Gross:

1386 Q. You never told a man he should not handle any other? A. We never told him to.

By Mr. Haycraft:

Q. You do have, however, customers who push your line more than any other line? A. I hope so.

Q. You also had in 1927, customers who featured your line to the exclusion of others by advertising and sales effort. A. I don't like the word "exclusion".

Q. Well, more than others? A. Yes.

Q. In Washington, D. C., who were your principal distributors?

Mr. Gross: In 1927.

A. In 1927, it was singular, just the Graybar Electric Co.

Q. That was formerly the Carroll Electric Co., wasn't it? A. It was.

Q. Who were your principal distributors in Richmond Va., in 1927? A. We had no real principal distributor. The distributor was the Binford Electric Co. 1388

Q. The sales were small in that territory? A. They were small in that territory.

Q. Through what distributors did you make your principal sales in Norfolk in 1927? A. Atlantic Electric Co.

Q. Is that a chain store? Does it have branches in other cities? A. No; it is an independently owned and operated house. There is no connection between that and any other like-named concern.

Q. To what firm did you make your principal sales during 1927 in Greenville, S. C.? A. The Textile Supply Co.

Q. The same question with respect to Atlanta, Ga. A. Southern Electric Supply Co. 1389

Q. Did that firm change hands? A. It did not.

Q. In 1928— A. (Continuing.) Not to my knowledge.

Q. —who was your principal distributor in Atlanta? A. The Economy Electric Supply Co.

Q. Do you recall now why the change was made? A. Yes. There was no change made, but we added a new distributor, which I personally negotiated.

Q. Did you sell the Economy Electric Supply the same type of products that you sold to the other one? A. We did.

Q. That is, the general line? A. We did.

Q. What was the principal distributor of your firm in Florida in 1927? A. Robertson Supply Co.

Q. Where? A. In Orlando.

Q. What were the total sales of the Hart & Hegeman Manufacturing Co. in the Baltimore territory in 1926 and 1927, which would include, as I understand it, the states of Virginia, North and South
1391 Carolina, Georgia and Florida? A. 1926, $144,163. 1927, $92,269.

Q. Do the totals which you have just read include sales made direct to manufacturers? A. They do.

Q. What were the total sales in the Baltimore territory to all class of trade in 1928? A. $80,217.

Q. 1929? A. $107,292.

Q. 1930? A. $92,364.

Q. Turn to the Chicago territory. The first district in that territory included what states, in 1927? A. Alabama, Louisiana, and Mississippi.

Q. Who were your largest distributors in 1927 in
1392 that territory? A. Cabell Electric Co. at Jackson.

Q. Mississippi? A. Jackson, Miss.

Woodward-Wight & Co. at New Orleans. Those are the only two big distributors.

Q. You sold to a number of smaller distributors in that territory, however? A. We did.

Q. District No. 2 of the Chicago territory included what states? A. The states of Colorado and Arizona.

Q. What concerns were your principal distributors in 1927? A. B. & R. Electric Co. at Denver.

The Mine & Smelter Supply Co. at Denver, and the Poindexter Electric Co. at Denver.

Q. You sold through other distributors in that territory, but those were the principal ones? A. Those were the principal distributors.

Q. Do you recall whether you sold a general line through those distributors, or was it specialized? A. I could not recall without consulting the records, but I would say we sold them a general line.

Q. District No. 3 of the Chicago territory includes what states? A. Idaho, Montana, Utah and 1394
Wyoming.

Q. Who were your principal distributors in that territory in 1927? A. The Zion Cooperative Mercantile Co., Salt Lake City, Utah.

Q. You had some other small distributors, but that was the principal distributor? A. Yes.

Q. District No. 4 of the Chicago Division included what territory? A. The City of Chicago and the suburbs.

Q. And who were your principal distributors in that territory in 1927? A. Amber Electric Supply Co., the Electric Appliance Co., Kubec, Steiner Electric Co., Revere Electric Co., Manhattan Elec- 1395
trical Supply Co., Graybar Electric Co., Metropolitan Electrical Supply Co., and the Wabash Electric Co.

BY MR. GROSS:

Q. In 1927 that was? A. Yes, in 1927.

BY MR. HAYCRAFT:

Q. Did you name the American Electric Supply? A. No. American Electric Supply Co.

1396 *Haynes L. Everest—Recalled—Direct.*

Q. District No. 5 includes what territory of the Chicago Division? A. District No. 5 includes Illinois other than Chicago.

Q. Who were your principal distributors in that territory? A. Valley Electric Supply Co., at Quincy, and the Resco Electric Supply at Rockford.

Q. There were other distributors in that territory, but those were the two principal ones? A. Yes.

Q. District No. 6 of the Chicago territory includes what? A. District No. 6 includes Indiana—

1397 the state of Indiana.

Q. Who were your principal distributors in that state in 1927? A. George Keiser & Co., Munsey, Capitol Electric Co. at Indianapolis. Graybar at Indianapolis. Kester Electric Co. at Terre Haute. The Protective Electric Supply Co., Fort Wayne. The Richmond Electric Supply Co. at Richmond.

Q. Districts numbers 7 and 8 included what states? A. 7 and 8 the State of Idaho.

Q. Who were your principal distributors in that territory? A. Collins Electric Co., at Des Moines. McGraw, at Sioux City. Republic Electric Co. at Davenport. Terry Durin Electric Co. at Cedar

1398 Rapids.

Q. District No. 9 included what states? A. Missouri, other than St. Louis, Kansas and Oklahoma.

Q. Who were your principal distributors in that territory in 1927? A. The Continental Electric Co., Kansas City. American Electric Supply Co., St. Joseph, Mo. Peabody Electric Co., Oklahoma City.

Q. District No. 10. A. The City of St. Louis.

Q. Who were your principal distribtuors in 1927 in St. Louis? A. Manhattan Electric Supply Co., Barrett Electric Supply Co., Lance Electric Supply Co., Commercial Electric Supply Co. Those were the principal ones.

Q. District No. 11? A. District No. 11, Kentucky.

Q. Who were your principal distributors in that state? A. H. C. Tafel Electric Co., Louisville.

Q. District No. 12? A. Detroit and Flint, Mich. Not the whole of Michigan, because that comes in on No. 13.

Q. Who were your principal distributors in that territory? A. Crescent Electric Co., Detroit. McNaughton-McKay Electric Co. Miller & Seldon Electric Co.

BY MR. GROSS:

1400

Q. All in Detroit? A. In Detroit.

BY MR. HAYCRAFT:

Q. District No. 13? A. District No. 13 includes Michigan not otherwise included in No. 12.

Q. Who were your principal distributors? A. Morley Bros., Saginaw, Mich. Independent Electric Co., Muskegon. Crandall Electric & Supply, at Jackson.

Q. Districts No. 14, 15 and 16 include what territory? A. The State of Minnesota.

Q. Who were your principal distributors in that territory? A. Sterling Electric Co., Minneapolis. 1401
Electric Supply Co. at St. Paul. Graybar Electric Co., Minneapolis.

Q. Did you have a distributor at Duluth? A. We did, the Westinghouse Electric Supply Co., in Duluth.

Q. Did you continue to sell to the Westinghouse after 1927, or was there a change made at that time? A. I could not answer that question.

Q. Did you make any change to the Marshall-Wells Company in Duluth? A. We did.

Q. In 1927? A. We did.

1402 *Haynes L. Everest—Recalled—Direct.*

Q. District No. 17? A. District No. 17, Nebraska.

Q. Who were your principal distributors in 1927 in Nebraska? A. The Korsmeyer Co., Lincoln, Nebraska. The Omaha Electric Co., Omaha, Nebraska.

Q. District No. 18? A. District No. 18 is the Cincinnati District.

Q. Who were your principal distributors there. A. Doremann-Roehrer Co. The Standard Supply Co. at Portsmouth.

Q. District No. 19? A. The Columbus-Dayton
1403 District.

Q. Who were your principal distributors there in 1927? A. Avery-Loeb Co., at Columbus. William Hall Electric Co., Dayton.

Q. District No. 20? A. District No. 20 is Cleveland.

Q. Who were your principal distributors there? A. George Worthington Co., Allen Electric Co., and the Graybar Electric Co.

Q. District No. 21? A. No. 21 is the Toledo District.

Q. Who were your principal distributors in 1927? A. The Toledo Electric Sales Co., and the Electric
1404 Supply Co.

Q. District No. 22? A. District No. 22 is Ohio, not otherwise covered.

Q. Who were your principal distributors? A. Hardware & Supply Co., Akron; Mooch Electric Supply Co., Canton; Hartman-Spreng Co., Mansfield, Ohio; Mooch Electric Supply Co., Youngstown, Ohio.

Q. District No. 23? A. District No. 23 is North and South Dakota.

Fargo Plumbing & Heating Co., Fargo.

Q. District No. 24? A. Arkansas and Tennessee.

Treadway Electric Co., Little Rock.

1405

Mills & Lupton Supply Co., Chattanooga.

Tafel Electric Co., Knoxville.

Dawkins Electric Co., Memphis.

Q. District No. 25? A. District No. 25 is Texas.

Q. Who were your principal distributors? A. The principal distributors are the Roberts Empire Electric Co., Houston. The Southern Equipment Co., San Antonio. Tell Electric Co., Houston.

Q. Do you know what happened to that company after 1927? A. It was purchased by one of our competitors. I don't know the details of it, but it was purchased.

1406

Q. District No. 26? A. No. 26 is Wisconsin. Roosevelt, W. A. Roosevelt, LaCrosse.

Standard Light Co., Milwaukee.

Julius Andrea & Sons Co., Milwaukee.

Q. Did you list the Graybar at Milwaukee? A. I am coming to that. The Graybar Electric Co., Milwaukee, Alexander M. Kailing, Milwaukee.

Q. That completes the Chicago territory, does it not? A. It does.

Q. Will you state for the record the total volume of sales for that territory for the years 1926 to 1930 inclusive? A. 1926, $1,368,941; 1927, $1,374,379; 1928, $1,430,859; 1929, $1,735,483; 1930, $1,277,163.

1407

Q. Do those figures include sales made direct to manufacturers? A. They do.

Q. Referring to the San Francisco territory, that is divided into seven districts, is it not? A. It is.

(Discussion off the record.)

Examiner Reeves: The hearing will be adjourned to 10 o'clock tomorrow.

(Whereupon, at 5 p. m., the hearing was adjourned to 10 o'clock a. m., daylight saving time, May 28, 1931.)

1408 *Haynes L. Everest—Recalled—Direct.*

Conference room, Arrow-Hart & Hegeman Electric Co., 103 Hawthorne Street, Hartford, Connecticut.

May 28, 1931.

Met pursuant to adjournment, 10 a. m., daylight saving time.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

1409

E. F. HAYCRAFT, Attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of GROSS, HYDE and WILLIAMS, 49 Pearl Street, Hartford, Connecticut, Attorney for the Respondent.

PROCEEDINGS:

HAYNES L. EVEREST, resumed direct examination

1410 (Continued).

BY MR. HAYCRAFT:

Q. What does the First District include? A. The City of San Francisco and Oakland.

Q. Who was your principal distributor in San Francisco in 1927; that is, in District No. 1? A. Graybar Electric Co., The Electric Corporation, Westinghouse Supply Co.; Gilson Electric Supply Co., Oakland.

Q. I notice that Dunham, Carrigan & Hayden were substantial customers in 1927, but thereafter no sales were made. Do you recall what happened? A. They were not in in 1927, according to my records. We did not sell them anything until 1928.

Q. What does District No. 2 include in the San Francisco territory? A. District No. 2 was Los Angeles territory.

Q. Who were your principal distributors in that district? A. In that district were Graham Reynolds Electric Co., Liebenwalter & Gough Electric Corporation, and Westinghouse Electric Supply Co.

Q. How about the Western Light & Fixture? A. The Western Light & Fixture, correct. 1412

Q. District No. 3 of the San Francisco territory? A. District No. 3 is Portland.

Q. Name the principal distributors there in 1927. A. North Coast Electric Co., Marshall-Welles Co. That is a branch of the Duluth firm.

Q. District No. 4? A. District No. 4 is Seattle. The principal distributors were the North Coast Electric Co., Graybar Electric Co., and Electric Corporation.

Q. There were some others, but those are the principal ones, is that correct? A. Correct.

Q. Now, the balance of that Pacific Coast territory, districts 5 and 6; did you have substantial distribution in that territory in 1927? A. The business in that territory is very small, to the best of my knowledge, and representation is accordingly. We had no large jobbing accounts. 1413

Q. District No. 7 included Honolulu? A. Honolulu. We had one distributor there, the Hawaiian Electric Co.

Q. In this Pacific Coast territory, did you sell a general line of electric wiring devices, or was the

1414 *Haynes L. Everest—Recalled—Direct.*

line restricted to any particular product? A. We did not sell our complete line on the Coast. We operated through a commission agent who had two other major lines of material.

Q. What were the principal lines that you sold there? A. The principal lines sold were switches.

Q. What other lines did your commission agent handle besides yours in 1927? A. He had the National Metal Molding Company—I think that is the name of it—now it is the National Metal Products Company.

1415 Q. What did they manufacture? A. Outlet boxes of all kinds, pipe, armour cable. They represented Simplex Manufacturing Company of Boston, a line of heaters and wiring, I think.

Q. What line of sockets? A. They represented the Hubbell Company of Bridgeport, on sockets and receptacles.

Q. I ask you to identify this piece of paper that I hand you now.

(Discussion off the record.)

A. This seems to be a correct list of Pacific jobbers.

1416 Q. They are some of the leading Pacific jobbers? A. Some of the leading Pacific Coast jobbers.

Q. And they are represented by numbers, so that the names will not appear? A. They are so represented.

Mr. Haycraft: I offer in evidence at this time the paper which has been identified by the witness as a statement of the volume of sales of selected customers in the Pacific Coast territory, showing distribution of products purchased by schedules B, S, P, H and Y, covered

by the respondent, as outlined in Exhibit 40, already in evidence, for the years 1928, 1929, 1930, of the Hart & Hegeman Manufacturing Company.

Examiner Reeves: This document will be received in evidence as Commission's Exhibit No. 83. It consists of two pages.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 83.")

Q. These customers that are indicated on this exhibit which you have just identified are the principal and leading customers in that territory? A. Yes. 1418

Q. Would you say they were representative jobber customers that you have on the Coast, so far as the distribution of your products was concerned during that time? A. I would say so, yes.

Q. Now, I show you what purports to be a similar tabulation of individual customers, by schedule, of the Hart & Hegeman Manufacturing Co., and later the Hart & Hegeman Division, for the Chicago territory, including the territory covered in your testimony for the years 1928, 1929 and 1930, and ask if these statements, which I will offer as one exhibit, correctly state the sales of the selected concerns in that territory, the names of the concerns not being listed on the exhibit, but merely the numbers having been given them for purposes of identification? A. I would say they did, yes. 1419

Mr. Haycraft: I offer this in evidence at this time.

Examiner Reeves: This sheaf of papers, consisting of eight pages, will be received in evidence as Commission's Exhibit No. 84.

1420 *Haynes L. Everest—Recalled—Direct.*

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 84.")

Q. Would you say that the customers, whose sales are included in this exhibit, are representative jobber customers in that territory so far as the sales of your product are concerned during that time? A. I would.

Q. I do not believe that the record contains the information, so I will ask you this question now:
1421 Why were you unable to prepare an exhibit of this kind for the years 1926 and 1927? A. We did not keep a complete and detailed record from which we were able to produce the figures.

Q. In that form? A. In that form.

Q. This sheet that I hand you now purports to be a similar statement of sales to individual customers in the Baltimore territory, which you outlined in your testimony yesterday. Is that a correct statement of the volume of sales as arranged there by schedules to the leading customers in that territory? A. It is.

1422 Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This document, consisting of one sheet, will be received in evidence as Commission's Exhibit No. 85.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 85.")

Q. And would you say, Mr. Everest, that they were representative jobber customers in that territory with respect to the distribution of your products? A. I would.

1423

Q. I now show you a similar set of tabulations of sales to individual jobber customers, of the Hart & Hegeman Manufacturing Co., by schedules, in the New York territory, as you described it in your testimony, for the years 1928, 1929 and 1930, and ask you if the tabulations correctly state the division of sales in those years to the customers indicated by number on that exhibit? A. They do.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This tabulation, consisting of 7 pages, is received in evidence as Commission's Exhibit No. 86.

1424

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 86.")

Q. I show you a similar tabulation covering the sales to individual customers of the Hart & Hegeman Manufacturing Co., by schedules, in the New England territory, for the years 1928, 1929 and 1930, and ask if that correctly states the division of sales to your leading jobber customers in that territory? A. It does.

Mr. Haycraft: I offer it in evidence.

1425

Examiner Reeves: This tabulation, consisting of three pages, is received in evidence as Commission's Exhibit No. 87.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 87.")

Q. Would you say that this exhibit would be representative of the sales made to jobber customers during those years in that territory so far as

1426 the division of sales was concerned? A. I would say yes.

Q. I don't think I asked you, Mr. Everest, what your total sales were in the San Francisco territory during 1926 and 1927. A. In 1926, $169,254.

1927, $174,446.

1928, $168,266.

1929, $190,245.

1930, $154,514.

Q. Now, Mr. Everest, from the sales records that you have before you, and from which you have been
1427 testifying in this proceeding, covering sales made to all customers, including manufacturers sold direct, and jobbers in the New England, New York, Baltimore, Chicago and San Francisco territories, what is the total volume of sales during 1926? A. $3,145,068.

Q. 1927? A. $3,147,178.

Q. In addition, there were sales made to customers in Canada, I believe? A. There were.

Q. Which are not included in those totals? A. That is right, but it does not include sales to other manufacturers of wiring devices and exports.

1428 (At this point there was discussion off the record.)

Q. Will you state for the record the total sales to the domestic trade in 1928, 1929 and 1930, excluding the same items that you have excluded for the totals in 1926 and 1927? A. 1928, $3,439,139.

1929, $3,757,091.

1930, $2,862,996.

Mr. Haycraft: That will be all, Mr. Everest.

CROSS EXAMINATION BY MR. GROSS:

Q. During the period of the 15 months, from October, 1927 to December 31, 1928, while the holding company, the old respondent, had its corporate existence, was there any change in the sales policy of the Hart & Hegeman Manufacturing Co., of which you were sales manager, to what it was prior to the formation of the holding company? A. There was none.

Q. Were the two sales organizations, that is, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., entirely distinct? A. Absolutely, 1430
and the same as they were prior to the organization of the holding company.

Q. Did you, at any time during the organization of the holding company, receive any instructions from any superior officer in your company establishing any different policy with reference to soliciting prospective customers who were habitual customers of the Arrow Electric Co.? A. None whatsoever.

Q. Did any officer of the holding company, of the old respondent, or of the Arrow Electric Co. ever give you any orders to keep away from Arrow customers or not to solicit from Arrow customers? A. 1431
No, sir.

Q. Did your salesmen under your management in the sales organization of the Hart & Hegeman Manufacturing Co. solicit as freely and as fully from all prospective customers in the United States, whether or not they were customers of Arrow, as you did prior to the formation of the holding company? A. They did.

Q. Was the sales effort of your organization during that 15 months period as intense, and were you

1432 *Haynes L. Everest—Recalled—Redirect.*

as fully equipped in personnel as prior to that time? A. The effort was more intense, and the personnel was increased.

Q. Since the organization of the new respondent, commencing January 1, 1929, you have been the sales manager of the Hart & Hegeman Division of the new respondent? A. I have.

Q. Since January 1, 1929, to the present time, have your salesmen in the field under your direction in the Hart & Hegeman Division of the new respondent had the same form of solicitation of cus-
1433 tomers and the same broad latitude and the same challenge to produce business for the Hart & Hegeman Division as formerly? A. They have.

Q. Are your salesmen in the Hart & Hegeman Division during the period of the new respondent, that is, since January 1, 1929, in active and free and full competition with the salesmen of the Arrow Division for the lines which you sell through your division, that is, the shelf goods or catalogue goods? A. Most assuredly they are.

Q. Do I understand that so far as there is any lowering of figures for the year 1930, you attribute that to the general business depression of the coun-
1434 try, solely? A. I do.

Mr. Gross: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. During this 15 months period, October, 1927 to December 31, 1928, to whom were you responsible? A. Mr. Williams.

Q. Did you know at that time that all the capital stock of the Hart & Hegeman Manufacturing Co. was owned by the old respondent, the Arrow-Hart

& Hegeman, Inc.? A. Frankly, I admit I don't know much of the actual stock transactions.

Q. Did you know that the capital stock of the Arrow Electric Co. was also owned by the old respondent, the Arrow-Hart & Hegeman, Inc.? A. I know only such facts as were set out in the printed notices that were sent to the various stockholders.

Q. Did you know Mr. Grier at that time? A. I did.

Q. Did you know he was president of the holding company? A. I think it was so stated in the records.

1436

Q. Is this the printed notice that you had in mind, Commission's Exhibit No. 27? A. I would say it was.

Q. Was there any notice sent out by you or by Mr. Williams to the salesmen of the Hart & Hegeman Manufacturing Co. informing them of the change in the ownership of the capital stock of the Hart & Hegeman Manufacturing Co. about that time? A. I can't recall any definite notice.

Q. Did you yourself inform the salesmen or branch sales officers as to the change in ownership? A. I don't think so.

Q. You are not sure of it? A. I do not recall any such notice.

1437

Q. Knowing, as you did, as a stockholder of the Hart & Hegeman Manufacturing Co., that the Arrow Electric Co. was owned by the same holding company, why were you so strenuous to obtain business from the customers of the Arrow Electric Co. as you had been before? A. I had in conducting the sales of the Hart & Hegeman business but one thought, and that was to produce the greatest amount of sales, regardless of where we got them, so long as it conformed to business, and, as far as

1438 our organization was concerned, the holding company did not exist.

Q. Do you think it is good business to take trade or custom away from another concern that is owned by the same interests? A. If a company is not strong enough to hold that business, and another branch of the company with which that was affiliated could go in and get that business, I would say yes, because if they could go in and get it somebody else could go in and get it, and that business was not permanent.

1439 Q. In other words, you think that if Hart & Hegeman could take the customer away from Arrow somebody else could? A. I certainly say so.

Q. Then there isn't any particular value in the Hart & Hegeman trade-mark in that? A. Well, I don't agree with that statement.

Q. Isn't it true that Hart & Hegeman would still take business where another concern could not take business? A. I will grant that.

Q. Isn't it a duplication of sales effort as well as expense of money for a salesman of one subsidiary to solicit business from a customer of another subsidiary? A. I can't subscribe to that, for

1440 the reasons I stated in my previous statement.

Q. Which statement? A. The one about getting business. If a company can't hold business, they are out of luck.

Q. Aren't you assuming a little too much when you assume that because Hart & Hegeman salesmen could take business away from Arrow customers, or rather, take an Arrow customer from the Arrow organization, that some one else could do likewise? A. I don't think any concern is impervious to the inroads of aggressive sales effort on the part of any manufacturer, whoever he may be.

1441

Q. Now, you had a great many common customers with the Arrow Electric Co., did you not, during that period of time? A. Some.

Q. What percentage, would you say, of your jobber customers, were also sold by the Arrow Electric Co. during that 15 months period of time? A. I would say, off-hand, that probably 25 to 30 percent of the customers were common.

Q. Now, as I understand your testimony and cross examination, your efforts to obtain business from this 25 or 30 percent, those common customers, were more strenuous during that 15 months period than before? A. We materially increased our sales effort. We did it to get all the business we could, and we made no exception whatsoever to the customer who we were after. Our salesmen had instructions to get the business. They had no restrictions or any ties as to where they went or whom they solicited.

1442

Q. And you think that is good business? A. I did, or I would not have done it.

Q. Did you have any special instructions to do that? A. None, other than such conferences that Mr. Williams and I had. I naturally would talk to the president of the company.

1443

Q. Now, take the period of time from January 1, 1929, down to the present. Has that policy continued? A. As far as our sales effort is concerned, we made practically no change in any method of solicitation of business.

Q. Is that despite the fact that Arrow salesmen are now under a common sales manager in the district offices? A. They are under a common agent, whose duty it is to see that each division produces and shows an increase.

1444 *Haynes L. Everest—Recalled—Redirect.*

Q. Are the Hart & Hegeman salesmen instructed to strenuously attempt to take business from Arrow salesmen?" A. We never have instructed them to strenuously attempt to take business away from any customer. We take only those that are vulnerable, and where the opportunity to get business seems most promising. It certainly would be very foolish to waste your time and spend money in attempting to take any competitor where you thought you did not have a chance of getting in.

Q. Are Hart & Hegeman salesmen instructed to
1445 make strenuous efforts to take business from Arrow customers where the salesmen think they can go in?" A. I give no instructions to salesmen as to where they are to get the business. They get it from the branch managers, and they operate from their headquarters, and he has no instructions as to how he shall solicit his business.

Q. Are your branch managers under Mr. Pond? A. As general sales manager, they are.

Q. Then, if I understand your testimony correctly, so far as your are concerned, the policy of solicitation of business by Hart & Hegeman salesmen in the 15 months period, from October, 1927 to January 1, 1929, and now is no different? A.
1446 That is correct.

Q. And both periods are no different than they were before October, 1927? A. That is correct.

Mr. Hayeraft: That is all.
Mr. Gross: That is all.

HARVEY C. POND, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you please give your name? A. Harvey C. Pond, 10 Westfield Road, West Hartford, Conn.

Q. What is your occupation? A. Vice President and General Manager of the Arrow-Hart & Hegeman Electric Co.

Q. That is what we term the new respondent? 1448
A. Yes.

Q. How long have you occupied that position? A. Oh, about nine months. I should say—nine months to a year.

Q. And prior to that time, what was your position? A. I was sales manager of the Arrow Electric Division.

Q. Of this same corporation? A. Of the same corporation, and prior to that I was with the Arrow Electric Co.

Q. That is prior to January 1, 1929, you were sales manager of the Arrow Electric Company? A. Arrow Electric Company. 1449

Q. How long were you sales manager of the Arrow Electric Company? A. About 10 years.

Q. During the time that you were sales manager of the Arrow Electric Co., to whom were you responsible? A. Mr. E. R. Grier.

Q. He at that time was either the president or vice-president of the corporation? A. Well, he was the managing and executive head. I am not sure whether he was vice-president or president.

Q. But he was the active executive head? A. Yes.

1450 *Harvey C. Pond—Direct.*

Q. I show you Commission's Exhibit No. 72, and ask if you identify that as a catalogue of the Arrow Electric Company issued about September, 1926? A. I do.

Q. Was that in effect in October, 1927? A. I could not say so until I see catalogue No. 22 and also No. 23.

Q. You have before you catalogue No. 22? A. Yes.

Q. And when was that put into effect? A. September, 1926.

1451 Q. How long was it in effect? A. Until November, 1927.

Q. So that it was in effect in October, 1927? A. Yes.

Mr. Haycraft: I offer that in evidence.

Examiner Reeves: This catalogue is received in evidence as Commission's Exhibit No. 88.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 88.")

Q. Did that catalogue contain the description of all the products offered for sale by the Arrow Elec-

1452 tric Company in October, 1927? A. No, it did not.

Q. I show you Commission's Exhibit No. 73, which is a catalogue, and will ask if you identify that. A. Yes, I do.

Q. What is it? A. It is a catalogue of heater switches.

Q. Of the Arrow Electric Company? A. Of the Arrow Electric Company: heater and range switches.

Q. Did these catalogues describe all the products for sale by the Arrow Electric Company in October, 1927? A. Practically, yes.

Q. What exceptions would you make? A. Something I couldn't—in other words, if a man wanted an adaptation from a standard product, some adaptation from a product shown in the catalogue, we would not list it.

Q. What items would you have in mind of which that might be true? A. We list in the standard catalogue push and pull switches. We had a customer for a special adaptation of those switches. We had another customer, as I recall, on the ordinary catalogue item, through cord switch. That was a special adaptation of this particular device. 1454

Q. Who had charge of the designing of the device? A. This catalogue material?

Q. Yes. A. Mr. Nero and Mr. Perkins.

Q. They were considered the technical men? A. The technical engineers.

Q. How long did they stay in your organization? A. They are still there, except Mr. Perkins, who has died recently,—about three or four weeks ago.

Q. So far as the items listed in this catalogue are concerned I understand that for convenience they have been classified by schedule? A. Correct.

Q. I show you Commission's Exhibit 40 and ask if you recognize that as being the generally understood classification by which the Arrow Electric Co. were selling in October, 1927? A. That is correct. We had a schedule I in the catalogue. It is classified as J, or to a certain extent. Our schedule Y was, I think, for statistical purposes. 1455

Q. Now, Mr. Pond, I show you Commission's Exhibit 67, which is a catalogue of the Hart & Hegeman Manufacturing Co., put in effect in 1926, and known as catalogue S. I will ask you to refer to that catalogue and to Exhibit 88, and testify for

1456 *Harvey C. Pond.—Direct.*

the record the various items that are identical or serve the same purpose in the two catalogues. A. Page by page?

Q. You can group the pages, or by schedule, or by any way that would make it easiest for you to do so, beginning with your own catalogue and referring to the items in the other catalogue, which would be identical or serve the same purpose. A. Let me ask: Do you want these items or groups? For example, the Arrow socket line may have one or two more items than the Hart & Hegeman Divi-
1457 sion,—or a general grouping?

Q. As a general grouping first, and if we want to make any distinction afterwards, we can do it. Give the pages included in your reference. A. Now, for example, pages 4, 5, 6, 7, 8, 9 and 10 in the Arrow catalogue correspond with material on pages 56, 57, 58, 59 and 60 in the H. & H. Catalogue.

Q. And generally, how would you describe these items? A. Brass shell interchangeable sockets and socket parts.

The material in the Arrow catalogue on pages 11, 12 and 13 correspond to the material on pages 62 and 63 of the H. & H. catalogue. It refers to
1458 porcelain sockets and socket parts.

Arrow pages 15 and 16 correspond to items shown in the H. & H. catalogue on page 72.

By Mr. Gross:

Q. Covering what? A. Covering Mogul sockets. The material on page 18 of the Arrow catalogue, the upper part of the page, corresponds with the material at the top of page 61 of the H. & H. catalogue, consisting of aluminum sockets and shade holders.

The material on the top half of page 19 of the Arrow catalogue corresponds to material on page 85 of the H. & H. catalogue, covering weatherproof sockets.

The material at the bottom of page 19 of the Arrow catalogue corresponds to material on page 86 of the H. & H. catalogue, consisting of weatherproof receptacles.

The material on pages 20 and 21 of the Arrow catalogue has corresponding devices shown on pages 79 and 80 of the H. & H. catalogue, covering porcelain receptacles, except that there are items in 1460
both catalogues that are not duplicated.

By Mr. Hayecraft:

Q. Each has items that are not duplicated in the other catalogue? A. Yes, there are one or two items in each catalogue that are not duplicated in the other one.

The material at the top half of page 22 of the Arrow catalogue has corresponding devices shown on page 76 of the H. & H. catalogue, consisting of porcelain removable ring receptacles, and here again there are one or two items in the Arrow 1461
catalogue which are not duplicated in the H. & H. catalogue.

The material at the bottom half of page 22 of the Arrow catalogue is shown on page 66 of the H. & H. catalogue, except that there are more in the H. & H. line than in the Arrow catalogue.

Q. What items are they? A. Adjustable canopy receptacles.

The material on page 23, the top half of the page, has corresponding devices listed at the top of page 76 of the H. & H. catalogue, except that here there are one or two in the Arrow catalogue that are

1462 not shown in the H. & H. catalogue, consisting of porcelain pull receptacles.

The material at the bottom of page 23 on the Arrow catalogue has corresponding devices on page 77 of the H. & H. catalogue, consisting of sign receptacles, except that there are again one or two items in each catalogue not duplicated in the other catalogue.

The material on page 24 of the Arrow catalogue has corresponding devices listed on page 81 of the H. & H. catalogue, consisting of outlet box re-
1463 ceptacles, as well as that shown on the top half of page 84.

The material shown on page 25 of the Arrow catalogue has equivalent devices shown on pages 82 and 83 of the H. & H. catalogue, porcelain lighting outlets.

The material shown on page 26 and the upper half of page 27 of the Arrow catalogue has corresponding devices listed at the bottom of page 61 of the H. & H. catalogue, except that the Arrow line is much more extensive and takes in many more items.

Q. What are the items? A. It is a bigger line.
1464 They are miniature and candelabra devices.

The material shown at the bottom of page 27 in the Arrow catalogue, consisting of socket adapters, is not duplicated in the H. & H. catalogue.

The material shown on pages 28 and 29 of the Arrow catalogue, consisting of candle sockets, have equivalent devices on pages 64 and 65 of the H. & H. catalogue.

Canopy snap switches shown at top of page 30 in the Arrow catalogue have an equivalent listing in the H. & H. catalogue at the bottom of page 33.

1465

Q. Up to this point, Mr. Pond, the items that you have described would all come under schedule B, for the most part? A. Yes, for the most part.

Q. And what would be the exception? A. I would not know of any exception; just some shade holders, and they would go under schedule H. Miniature and candelabra socket devices are H. Canopy switches are H.

Q. Will you now indicate, that is, from now on, what schedule they would come under? A. All right, sir.

1466

The sockets at bottom of page 30 in the Arrow catalogue, schedule B, are not duplicated in the H. & H. catalogue.

Q. What particular item is that? A. Keyless fixture sockets.

The shade holders at the top of page 31 of the Arrow catalogue, schedule D, are duplicated by the shade holders listed in the H. & H. catalogue on page 71.

Q. Shade holders are under schedule H in exhibit 40, are they not? A. Yes. The socket accessories shown at the bottom of page 31 of the Arrow catalogue have equivalent devices at the bottom of page 75 of the H. & H. catalogue, classified as schedule H in the Arrow catalogue, except that we have some one or more devices not duplicated in the H. & H. line.

1467

The same is true of page 32 of the Arrow catalogue, accessories, which have to a very large extent equivalent devices on page 75 of the H. & H. catalogue. Socket accessories are classified as schedule B.

The material listed at the top of page 33, pull socket accessories, schedule B, have no equivalent in the H. & H. line.

1468 We skip to page 37 of the Arrow catalogue, because the intervening pages are descriptive matter and not devices.

The material shown on page 37 of the Arrow catalogue, consisting of surface tumbler switches, schedule S, has corresponding devices at the top of page 33 of the H. & H. catalogue.

The material shown on page 38 of the Arrow catalogue, surface snap switches, has an equivalent listing on pages 6 to 15 of the H. & H. catalogue, except that the H. & H. listing is a little larger
1469 than the Arrow listing, and in each catalogue there are devices not listed in the other one.

Q. What do you mean by "larger?" A. One more group of switches in it. That is schedule S.

The material shown on page 39 in the Arrow catalogue has an equivalent line of devices shown on the top half of pages 8 to 16 of the H. & H. catalogue, consisting of three-way surface snap switches; schedule S, except that in both lines are groups not shown in the other line.

The material shown on page 40 of the Arrow catalogue, consisting of double pole and four point surface snap switches, schedule S, has an equiv-
1470 alent listing on pages 7, 8, 15 and 16 of the H. & H. catalogue, except that again the groups are not exactly corresponding.

The material shown on page 41 of the Arrow catalogue, consisting of surface snap switches, schedule S, has equivalent devices on pages 41 and 42 of the H. & H. catalogue, consisting of Electrolier surface snap switches, schedule S, and has equivalents shown on pages 12, 13, 14, 16 and 17 of the H. & H. catalogue, except that in the H. & H. catalogue and in the Arrow catalogue there are groups not shown in the other catalogue.

Q. Groups or items? A. Well, they are groups.

Page 43 of the Arrow catalogue, consisting of surface snap switches, with different types of bases, has equivalents on page 10 of the H. & H. catalogue, except that there again there is one more group in each line not shown in the other line.

Material shown on pages 44 and 45 of the Arrow catalogue, consisting of 600 volt surface snap switches, schedule S, has equivalent devices listed on pages 20, 21 and 23 of the H. & H. catalogue, except the listing in the H. & H. catalogue is very much more extensive than in the Arrow catalogue. 1472

Q. More items or more groups? A. Well, they have the car heater business.

Material shown at the top of page 46 of the Arrow catalogue, consisting of ceiling pull switches, schedule S, has equivalent listings on page 38 of the H. & H. catalogue.

Material shown at the bottom part of page 46 of the Arrow catalogue, consisting of door switches, schedule S, is partially duplicated by the listing at the bottom of page 31 in the H. & H. catalogue. We have many more types of door switches than they show.

Page 47 of the Arrow catalogue, the top half, 1473 has a duplicate material on page 31 of the H. & H. catalogue, except that the Arrow catalogue has one or two more items than the H. & H. catalogue, pendent and feed-through cord switches.

Q. Still schedule S? A. Schedule S in the H. & H. catalogue, but schedule H in Arrow.

Items shown on the bottom of page 47 in the Arrow catalogue, appliance switch plug, schedule H, has no equivalent in the H. & H. line.

1474 *Harvey C. Pond—Direct.*

Material shown on pages 48 and 49 of the Arrow catalogue, consisting of snap switch accessories, such as lock attachments and switch handles, partially schedule S and partially schedule H, has equivalent devices on pages 24 and 25 of the H. & H. catalogue.

Pages 50 and 51 of the Arrow catalogue, consisting of high capacity heater switches, schedule S-1, are paral[illegible]by the switches shown on pages 18 and 19 o[illegible]he H. & H. catalogue.

Q. Schedule S? A. Schedule S-1. Well, you had
1475 better say schedule S, because that is only a subdivision of schedule S.

Material shown on page 52 of the Arrow catalogue, consisting of push button flush switches, is paralleled by the listing in the H. & H. catalogue on the bottom of page 35 and on page 36. This is also schedule S.

Material on pag[illegible] 53 of the Arrow catalogue, consisting of adjustable push switches, schedule S, is paralleled on page 36 of the H. & H. catalogue in their Electrolier type switches. The switches in the Arrow catalogue sell, however, at very much higher prices, and operate entirely differently. Ul-
1476 timately, however, they accomplish the same purpose.

Q. How do the prices compare? A. The Arrow is very much higher: $1.80 and $2.00, and the H. & H. $1.05 and $1.15.

Switches listed on page 54 of the Arrow catalogue, consisting of self restoring switches, schedule S, are duplicated on page 29 of the H. & H. catalogue.

Material shown on page 55 of the Arrow catalogue, consisting of push switch plates, schedule

S, has corresponding devices listed on page 44 of the H. & H. catalogue.

Material shown on page 56 of the Arrow catalogue, consisting of flush tumbler switches, has corresponding devices shown on page 34 of the H. & H. catalogue.

Material shown on page 57 of the Arrow catalogue, consisting of plates for tumbler flush switches, has corresponding devices listed on page 45 of the H. & H. catalogue. That would be schedule S.

Material shown on page 58 of the Arrow cata- 1478
logue, consisting of metal handle tumbler flush switches, has corresponding lines shown on page 35 of the H. & H. catalogue, schedule S, except that Arrow has a couple of Electrolier type switches not shown in the H. & H. line.

Material shown on page 59 in the Arrow catalogue, metal plates for metal handle tumbler switches, has corresponding listing shown on page 46 in the H. & H. catalogue.

The material shown on page 60 of the Arrow catalogue, push and pull switches, schedule S, has no equivalent in the H. & H. catalogue.

Material shown on page 61, the top half on page 1479
61, in the Arrow catalogue, rotary flush switches, schedule S, has corresponding devices shown on page 41 of the H. & H. catalogue.

The plates shown on the same page of the Arrow catalogue, for rotary flush switches, have corresponding devices shown on page 50 of the H. & H. catalogue.

The motor starting switch, shown at the bottom of page 61 of the Arrow catalogue, schedule S,—I don't find any equivalent in the H. & H. catalogue for that.

1480 *Harvey C. Pond—Direct.*

The first item on page 62 of the Arrow catalogue, Edison base receptacles, has a corresponding device at the top of page 94 of the H. & H. catalogue, schedule H.

I am giving the schedules from this book, the Arrow catalogue.

There are no equivalent items in the H. & H. catalogue for the balance of the material on page 62.

Q. And what do they consist of? A. Midget receptacles and combination receptacles.

Page 63 of the Arrow catalogue, lid plates for
1481 the Edison receptacle, have corresponding devices shown on page 48 of the H. & H. catalogue. There are no equivalents in the H. & H. catalogue for the other plates shown on that page. Schedule H.

On page 64 of the Arrow catalogue, Bulls Eye receptacle and the bulls eye themselves, together with the plates for the bulls eye receptacles, have a corresponding listing on page 40 of the H. & H. catalogue. Schedule H. There are no equivalents in the H. & H. catalogue for the other devices shown on that page.

Q. What do they consist of? A. They consist of a Louvre plate, and combination switch and pilot
1482 light.

Material shown on page 65 of the Arrow catalogue, consisting of blank plates, schedule H, has corresponding listing on page 50 of the H. & H. catalogue.

Page 66 of the Arrow catalogue, Arrolite plates, combinations of schedules S and H, have corresponding listings on page 49 of the H. & H. catalogue.

Page 67 is descriptive, and is omitted or passed over.

Pages 68 and 69 of the Arrow catalogue, describing combination plates, schedule H, have a corresponding listing on page 52 and page 53 of the H. & H. catalogue.

The top half of page 70 of the Arrow catalogue, convenience outlets, schedule P, has corresponding devices listed on page 92 of the H. & H. catalogue.

The bottom half of page 70, consisting of combination convenience outlets, also schedule P, has corresponding devices shown at the bottom of page 40 of the H. & H. catalogue.

Page 71 of the Arrow catalogue, plates for con- 1484
venience outlets, schedule H, has a corresponding listing on page 47 of the H. & H. catalogue.

The bottom of page 71, the bottom half of that page, metal covered receptacles, outlet box attachment plug receptacles, schedule P, has a corresponding listing at the bottom of page 92 of the H. & H. catalogue.

Page 72 of the Arrow catalogue, surface bases for attachment plug devices, schedule P, has a corresponding listing on page 93 of the H. & H. catalogue, except that there are some items in both catalogues not duplicated in the other catalogue.

Page 73 of the Arrow catalogue, tandem blade 1485
attachment plugs, and parts—no equivalent in the H. & H. catalogue.

Page 74 of the Arrow catalogue, attachment plug caps, schedule P, are partially paralleled on page 95 of the H. & H. catalogue. There are more items in the Arrow listings than there are in the H. & H.

Page 75 of the Arrow catalogue, complete attachment plugs, schedule P, are partially duplicated on page 95 of the H. & H. catalogue. The Arrow listing is bigger.

Pages 76, 77 and 78 of the Arrow catalogue, consisting of cord connections and motor plugs, schedule P, have no equivalent in the H. & H. catalogue.

Page 79 of the Arrow catalogue, one item, keyless and current tap, schedule P, is duplicated at the bottom of page 94 of the H. & H. catalogue. There is no equivalent in the H. & H. catalogue of any of the other materials shown on that page, consisting of current taps, double taps, pendent switch current taps, and combination porcelain receptacles, switch and pilot light, the last item being
1487 schedule H.

Pages 80 and 81 of the Arrow catalogue, consisting of polarized attachment plug devices, schedule P and schedule H, have no equivalent in the H. & H. catalogue.

Page 82 of the Arrow catalogue, one piece attachment plugs, schedule H, has no equivalent in the H. & H. catalogue.

Material shown on page 82, the bottom part, of the Arrow catalogue, radio receptacles, schedule H, has an equivalent line on page 38 of the H. & H. catalogue.

Pages 83, 84 and 85 of the Arrow catalogue, con-
1488 sisting of elexits, schedule LX, has an equivalent listing on page 55 of the H. & H. catalogue.

Page 86 in the Arrow catalogue, the top half of that page, consisting of plug cutouts, schedule I, classified in Exhibit 40 as schedule Y, has a parallel line in the H. & H. catalogue on page 98.

Near the bottom of page 86 of the Arrow catalogue, consisting of plug fuses, is paralleled by material shown on page 96 of the H. & H. catalogue. Schedule I is classified as schedule Y in Exhibit 40, except that I might say the H. & H. devices are re-

newable, so it does not exactly correspond in a commercial sense.

Material shown on page 87 of the Arrow catalogue, consisting of rosettes, schedule H, has corresponding devices shown on pages 88 and 89 of the H. & H. catalogue.

Material on page 88 of the Arrow catalogue, the top half of that page, porcelain rosettes, is paralleled by page 90 of the H. & H. catalogue. This is schedule H.

Material on the bottom half of page 88 of the Arrow catalogue, metal covered rosettes, has no 1490
equivalent in the H. & H. catalogue.

And that is the end of the catalogue.

Examiner Reeves: We will adjourn until 2 o'clock P. M.

(Whereupon, at 1 P. M., daylight saving time, the hearing was adjourned to 2 o'clock P. M., daylight saving time.)

After adjournment—2 P. M.

HARVEY C. POND, resumed. 1491

DIRECT EXAMINATION (Con.) BY MR. HAYCRAFT:

Q. I notice that you found a few items in the Arrow catalogue that were not listed in Hart & Hegeman catalogue. Were there some also in the Hart & Hegeman catalogue that are not listed in the Arrow that you did not mention as you leafed through the catalogue? A. Yes, sir.

1492 *Harvey C. Pond—Direct.*

Q. Will you refer to the Hart & Hegeman catalogue now, the one that you had before you when you testified this morning, and state for the record the devices that are listed there and that are not listed in the Arrow catalogue. A. Page 7, the bottom half of the page, triple pole surface snap switches, schedule 8.

Q. Can you state for the record why the Arrow Company did not handle a line of that device? A. Apparently had no demand from the field for it.

Page 9, surface snap switches, with extension
1493 covers.

Q. What use is made of those things? A. I have no idea.

Q. Will you state why the Arrow Company did not carry that line? A. Apparently for the same reason; apparently never had any demand from the field.

Page 10, surface snap switches for metal moldings, schedule 8. This line had been made in previous years, but it was discontinued.

Q. For what reasons? A. Due to small sales. The last statement also applies to page 11 of the H. & H. catalogue, surface snap and metal molding
1494 switches, schedule 8.

Q. Mr. Pond, with reference to these, that you have already described, are those switches still listed in the H. & H. catalogue now being published? A. I don't know. Have you got one here?

Q. I hand you Commission's Exhibit No. 82.

Mr. Gross: That is the last catalogue?

Mr. Haycraft: Yes.

A. They are, but in a smaller degree: it has been boiled down.

Pages 12, 13, 14 and 15 of the H. & H. catalogue, Electrolier surface snap switches, schedule S, of higher capacity, that is, 20 amperes; we stopped in the Arrow catalogue at 10 amperes.

Q. For what purposes are these 20 ampere switches used? A. I couldn't say, unless, I imagine, it is for car heating or car lighting, for which we have no particular demand.

Q. Do you know whether they are still listed in the new H. & H. catalogue? A. They are.

Q. Are sales of those switches made direct to manufacturers? A. I don't know. 1496

Q. Who in your organization would know the class of trade to which that is now sold? A. Either Mr. Everest or Mr. Cook.

Page 21 of the H. & H. catalogue, 600-volt switches for electric railway use, except for the first two groups, the three-way switches.

Q. Is that also for a special use? A. That is for electric railway use.

The same thing applies to the switches on page 22, the first half of the page.

It also applies to the two bottom groups on page 23, which are 600-volt circuit switches, schedule S.

On page 25, the lower half of the page, we have the so-called fused safety switches. 1497

Q. For what special use are they made? A. This is electric appliances, and so forth, built for garage type fuses, schedule S; no equivalent in the Arrow catalogue.

That also applies to the switches listed on page 26 of the H. & H. catalogue, fused safety switches, schedule S.

Page 27 of the H. & H. catalogue, double-pole double-throw switches, I don't know what they are used for.

Mr. Williams: For motor reversing switches.

1498 A. Principally used for motor reversing switches. Schedule 8.

The same thing applies to page 28 of the H. & H. catalogue, motor control and reversing switches, schedule 8.

Page 30 of the H. & H. catalogue, panel board switches, schedule 8, not paralleled in the Arrow line.

Q. What are they used for? A. On panel boards.

Q. For lighting? A. Yes, for lighting. I imagine I am stating guess-work, because I am not very
1499 familiar with that line.

The top part of page 32, H. & H. catalogue, has an automatic shatter flush receptacle, which is not duplicated in the Arrow catalogue. That is schedule 8.

Pages 34, 35 and 37, listed as composition base flush tumbler switches, schedule 8.

Q. What are they used for? A. For high class architectural specified jobs, for jobs specified by architects.

Q. Not sold through jobbers? A. Yes, but upon specification.

Q. You do not make those? A. We did, but not
1500 the high priced ones.

Page 87 of the H. & H. catalogue, fielding receptacles. They are schedule B. That line, I imagine, was an inheritance from the H. T. Paiste Co.

Q. Why didn't you carry that? A. Well, we had material that—if I recall correctly, it was made on pipe taplets, which went with the original Paiste line, and which was confined—there wasn't enough volume for more than one or two manufacturers to make it; not worth while for more than one manufacturer to go into it. There apparently had been enough in the field.

Page 91, schedule J, fielding rosettes.

Q. What would it correspond to here in the group of schedules that are in Exhibit 40? A. Schedule H.

Page 94, the H. & H. catalogue, the second and fourth groups, canopy receptacles, schedule K. We had nothing like it at all in the Arrow catalogue.

Q. What is the reason for that? A. The same reason as before; either this device was not good enough or there was no demand in the field for us to make it.

Page 97, knife switches, schedule J. 1502

Q. The same as our H? A. No, it is a different line entirely. We never got into the line.

Q. In this Exhibit 40, isn't it listed under H? A. Yes.

Page 99, enclosed fuse cutouts, schedule L. I imagine that would go into schedule Y on this Exhibit 40.

Pages 100 and 101, entrance switches, schedules E and I; that probably would go into schedule H on the exhibit.

Pages 102 and 103, panel cut-outs, schedule I. That presumably would go into schedule H on that exhibit.

1503

Q. How does it happen that your company did not carry these cut-outs? A. We did carry cut-outs.

Q. I mean that type? A. It is an old line that has been manufactured by a great many people for years. It is bulky, low-priced, and we wanted to concentrate more on the profitable items. There are so many sources available, it was not particularly productive business.

Q. Do you know whether or not the H. & H. catalogue today carries these items—cut-outs and

special switches? A. They are practically all eliminated. There is just one entrance switch left.

Q. Does the new catalogue carry any knife switches? A. It does not.

Page 104, Paiste moldtaps, schedule J. That corresponds to schedule H in Exhibit 40. It was a specialty of the old Paiste Company, which we never followed.

Pages 105, 106, 107 and 108, radio accessories. The radio accessories on schedule R. I don't believe we had any corresponding items.

1505 Q. At that time? A. No, or now.

Q. Do you carry them now? A. No.

Q. You don't sell them? A. No.

Q. Are they listed in the catalogue? A. No.

Q. You carry radio outlets—that is what I had in mind? A. Oh, yes, but these were accessories to go with the radio receiving sets, and stuff like that.

Q. In your sales organization in October, 1927, who was in charge of your Boston office? A. Mr. A. C. Nelson. We had two salesman.

By Mr. Gross:

1506 Q. You are talking about 1927? A. October, 1927.

By Mr. Haycraft:

Q. What territory did he have under his supervision? A. New England.

Q. What states would that include? A. All the New England states.

Q. Who was in charge of your New York office at the same time? A. Mr. Deacon.

Q. What are his initials? A. A. P.

Q. How many salesmen did he have under him? A. He had six men.

Q. What territory did he cover? A. He covered the Atlantic seaboard down to and including Delaware, but stopping at Maryland, and including Pennsylvania, New Jersey, New York, and West Virginia.

Q. Who was your Baltimore manager? A. M. F. Green, with one and one-third men.

Q. How do you mean that? A. We had a salesman who worked out of Atlanta, and one-third of 1508
his time was devoted to Baltimore, and two-thirds of his time to the Chicago office.

Q. What territory was included in the Baltimore division? A. Maryland, Virginia, North and South Carolina, Georgia, and Florida.

Q. Who was in charge of your Chicago office? A. Mr. R. L. Wildauer, with four and two-thirds men.

Q. What territory did he cover? A. He covered from—do you want them by states? He covered from the Rocky Mountains to the East, to what I have given you.

Q. Who was in charge of the San Francisco office? A. Mr. S. B. Gregory, with two men cover- 1509
ing the Pacific Coast states, Washington, Oregon and California.

Q. Now, these branch managers—the salesmen called on what class of trade in endeavoring to sell your products? A. Jobbers chiefly; practically 99 percent jobbers.

Q. Did they go around with the jobbers' salesmen as missionary men and call on their customers? A. They did on occasion. You mean the salesmen, or the manager?

1510

Q. Either one. A. Managers were chiefly policy men, seeing jobbers.

Q. And the salesmen? A. The salesmen would endeavor to help the jobbers, by traveling with their salesmen on occasions, and calling on trade.

Q. What trade would they call on with the jobber salesmen? A. The contractors and fixture manufacturers.

Q. Referring to your sales by the Arrow Company to individual customers in the Boston or New England territory, each territory was divided into

1511 districts? A. Yes, sir.

Q. For what purpose were they divided? A. To concentrate the attention of the manager.

Q. Was each district assigned to a certain salesman? A. Simply split up so that we in our study and he in his study could concentrate his attention.

Q. District No. 1 included what in the New England territory? A. From the record in front of me, I would say that it included Greater Boston.

Q. Who were your principal customers there in 1927? A. Wetmore Savage, Voye Electric Supply Co., Sager Electric Supply Co., F. S. Hardy, George H. Wahn, Vye Smith Company, R. V. Pettingill.

1512 Q. Have you continued to sell the various concerns named since 1927, or have there been some changes in distribution? A. R. V. Pettingill Co. went out of business.

Q. What year? A. I should say during the latter part of 1927, because there were no sales to them after that.

Q. How about Vye Smith? A. Vye Smith I don't recall, but I think they also went out of business in the latter part of 1929.

Q. Did you sell a general line of your product to your jobbers? A. Yes, sir.

Q. In 1927? A. Yes, sir.

Q. Did any of them sell your line exclusively? A. No, they did not.

Q. Were any of them also distributors of the Hart & Hegeman products? A. Presumably. I don't know.

Q. These little column marks there (indicating). A. Oh, yes. You understand, when I say exclusively, that there are a great many manufacturers competing for the business, and that, while our line may have been the principal one at that time, they undoubtedly bought from competing manufacturers, 1514 although ours may have been the principal one at the time.

Q. How many of these distributors in that territory also handled Hart & Hegeman products, just of those named? A. Will you read those to me, please?

Mr. Gross: Wetmore Savage.
The Witness: They did.
Mr. Gross: Voye.
The Witness: They did not.
Mr. Gross: Sager.
The Witness: They did.
Mr. Gross: Hardy. 1515
The Witness: He did.
Mr. Gross: Wahn.
The Witness: They did.
Mr. Gross: Vye Smith.
The Witness: No.
Mr. Gross: Pettingill.
The Witness: No.

Q. Did you make some sales also to the Milhender Supply Company? A. Oh, yes; not large;

1516 presumably due to the fact that there was some Arrow demand that they had to pick up.

Q. Are they recognized as the distributor of any particular line? A. I couldn't say. Are we talking of 1927?

Q. Yes. Did you make any sales direct to manufacturers in the Boston territory in 1927? A. We did.

Q. What type of product? A. One case of socket material and one case of heater switches.

Q. What did District No. 2 of your Boston ter-
1517 ritory include? A. Primarily Rhode Island, although there is the southern tip of Massachusetts that comes in there.

Q. Who were your principal distributors in that territory? A. We only had one that amounted to anything, the City Hall Hardware Co., Providence.

Q. Did you make any sales to Belcher & Loomis Hardware Co. in Providence? A. Yes; not large.

Q. That concern also bought from the Hart & Hegeman Manufacturing Company? A. Yes.

Q. District No. 3 included what? A. District No. 3 included the State of Maine.

Q. Who were your principal distributors in that
1518 state in 1927? A. Holmes Electric Supply Co. and the Eastern Electric Supply Company; both at Portland, Maine.

Q. Did you continue to supply the Eastern Electric Supply Co. after 1927? A. They went out of business, and were succeeded by Spencer F. Fearon.

Q. And you continued to sell that concern? A. Yes.

Q. District No. 4? A. That is Northern Massachusetts and Vermont, I think.

Q. What distributors handled your product there? A. The Mountain Electric Supply Co. of

Pittsfield, and the Champlain Electric Supply Co. The latter, I think is in Burlington, Vermont.

Q. Did you continue to sell both those concerns after 1927? A. We did for a period of one year, and then they were bought by one of our competitors and we ceased to sell them.

Q. How is that territory covered now? A. I don't think there is any distribution there.

Q. How about the jobbers out of Springfield? A. Probably covered from Springfield or Worcester, but not directly from that territory.

Q. District No. 5? A. Worcester and surrounding towns. 1520

Q. Including Manchester, New Hampshire? A. Yes, that includes Manchester.

Q. Who were your principal distributors in that territory in 1927? A. The Granite State Electric Supply Co., Manchester, New Hampshire; Merrill Electric Supply Co., Worcester, and the Coughlin Electric Supply Co., Worcester.

Q. District No. 6? A. Springfield, Mass.

Q. Who were your principal distributors there in 1927? A. Charles E. Hayes Co. and the Hampden Electric Supply Co., the principal distributors.

Q. You made some sales to the Wetmore Savage Company? A. Some. 1521

Q. Did the Hart & Hegeman sell to any of these distributors? A. They sold to Charles E. Hayes and Wetmore Savage.

Q. District No. 7? A. That is Hartford and vicinity, including Torrington, New Britain, Winsted, Forestville, and so forth.

Q. Who were your principal distributors in that territory? A. In 1927, Rogers Electric Supply Co., Hartford; Spring & Buckley Electric Co., New Britain, and two other small ones; J. O. Simons, Hartford.

1522 *Harvey C. Pond—Direct.*

Q. Were any of these distributors sold by the Hart & Hegeman? A. No.

Q. Did you make any sales direct to manufacturers in that territory? A. We did.

Q. What items? A. Heater switches, attachment plugs, and through cord switches.

Q. District No. 8? A. Southwestern Connecticut.

Q. Who were your principal distributors there in 1927? A. Connecticut Electric Equipment Co., Meriden, C. S. Mersick Co., New Haven; Mar Le
1523 Co., Stamford; Union Light Co., Bridgeport. That is all.

Q. Were any direct sales made to any manufacturers in that territory in 1927? A. Yes.

Q. Of what device? A. Attachment plugs.

Q. Will you state the total volume of sales of the Arrow Electric Co. in the New England territory for the years 1926 to 1930, inclusive, by years? A. For 1926, $483,933.

1927, $414,842.

1928, $416,596.

1929, $392,372.

1930, $373,384.

1524 Q. I notice there that the sales in 1929 are less than in 1927 and 1928. Do you have any explanation for that? A. May I call your attention to the fact that this customer 123 is also a manufacturer.

Q. Not direct sale? A. Yes.

Q. What item? A. Sockets.

Now, from the records here it would appear to me that we lost considerable business from the Union Light Co. of Bridgeport, and I think that was to Hart & Hegeman.

Q. What are the items? A. On the general line, the jobbing line.

Q. Will you check that and make sure? A. Yes, I will.

(Discussion off the record.)

The Witness: I want to correct my answer. The business faded out and the concern went out of business. We lost more jobbing business from the C. S. Mersick Co. in New Haven, and lost considerably more from the Atward, in Waterbury.

Q. I show you what purports to be a statement of individual customers, by schedule, of sales made by the Arrow, beginning in 1926 and running to 1930, for the New England territory, the names of the customers not being shown, but being represented in each instance by a number, and I ask you whether or not this statement correctly sets forth the division of sales by schedules to the customers indicated thereon. A. I assume it does, on the assumption that it was taken from our records. 1526

Q. I notice that there are certain numbers or asterisks. What is the significance of that? A. Common customers with Hart & Hegeman.

Mr. Haycraft: I offer the exhibit in evidence. 1527

Examiner Reeves: This document, consisting of three sheets, is received in evidence as Commissioner's Exhibit Number 89.

(The document was thereupon received in evidence and marked "Commission's Exhibit Number 89.")

Q. The New York territory was divided into how many districts? A. 15 districts.

1528 *Harvey C. Pond—Direct.*

Q. District No. 1 included what? A. New York City and points like Mt. Vernon and Ossining.

Q. Who were your principal distributors in 1927? A. Samuel Frost, Hirschfeld Electric Supply Co., Joseph Kurzon, A. Schemel & Co., Grand Brass & Electric Supply Co., National Gas & Electric Light Co.

Q. Did you make any sales in substantial quantities to the Garfield Elliott Electrical Supply Co.? A. Fairly good quantities.

Q. The Gertler Electric Co.? A. Yes, not even as
1529 much as Garfield.

Q. Holloway-Bentz & Co.? A. A fair amount of sales.

Q. The New England Incandescent Supply Co.? A. Yes.

Q. The Ostrander Electric Supply Corporation? A. Yes.

Q. Of those that have been named, how many were also customers of the Hart & Hegeman Co.? A. Will you read those to me?

Mr. Gross: Samuel Frost.
The Witness: No.
1530 Mr. Gross: Hirschfeld Electric Supply Co.?
The Witness: No.
Mr. Gross: Joseph Kurson.
The Witness: No.
Mr. Gross: Schemel Co.
The Witness: No.
Mr. Gross: Grand Brass & Electric Light Co.
The Witness: No.
Mr. Gross: National Gas & Electric Co.
The Witness: No.
Mr. Haycraft: Garfield Elliott.

The Witness: Yes.
Mr. Haycraft: Gertler.
The Witness: No.
Mr. Haycraft: Holloway-Bentz.
The Witness: Yes.
Mr. Haycraft: New England Incandescent.
The Witness: No.
Mr. Haycraft: Ostrander.
The Witness: No.

Q. Did you continue all of those distributors after 1927? A. May I have you read those again? 1532

Mr. Gross: Frost.
The Witness: Yes.
Mr. Gross: Hirschfeld.
The Witness: Yes.
Mr. Gross: Kurzon.
The Witness: Yes.
Mr. Gross: Schemel.
The Witness: Yes.
Mr. Gross: Grand Brass.
The Witness: Yes.
Mr. Gross: National Gas.
The Witness: Yes, up until 1929.

1533

Q. What happened at that time? A. I don't know; probably went out of business.

Mr. Gross: Garfield Elliott.
The Witness: Yes.
Mr. Gross: Gertler.
The Witness: Yes.
Mr. Gross: Holloway-Bentz.
The Witness: Yes.
Mr. Gross: New England Incandescent Lamp.

1534 *Harvey C. Pond—Direct.*

The Witness: Yes.
Mr. Gross: Ostrander.
The Witness: Yes.

Q. District No. 2? A. We take in Brooklyn and Queens.

Q. Who were your principal distributors? A. Bangert Electric Co. They were not a common customer, and we continued to sell them after 1927.

Imperial Electric Supply Co. They were not a common customer and we continued to sell them
1535 after 1927.

Universal Electric Supply Co.; not a common customer and continued sales.

Morris Shoham Electric Supply Co., Jamaica, not a common customer, and we continued to sell them after 1927.

Q. That is enough. District No. 3? A. That is the Hudson River District, Albany, Poughkeepsie, Troy, and Northeastern New York State.

Q. Who were your principal distributors? A. William Davis Hawk, Kingston, N. Y.; not a common customer and continued sales.

Hinsdel Electric Co., Troy, N. Y., not a common
1536 customer and continued sales.

J. A. Freeman & Sons, Plattsburgh, N. Y., not a common customer and continued sales.

Q. District No. 4? A. District No. 4 is the southern tier of New York State.

The principal customers in 1927 were Crocker & Ogden. I am not sure whether they were Stevenson or Crocker & Ogden, Binghamton, N. Y., not a common customer and continued sales up to 1930.

Southern New York Electric Supply Corporation, Binghamton, not a common customer and continued sales.

CLERK'S OFFICE

TRANSCRIPT

Supreme Court of the United States

OCTOBER TERM, 1928

No. 363

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY, PETITIONER,

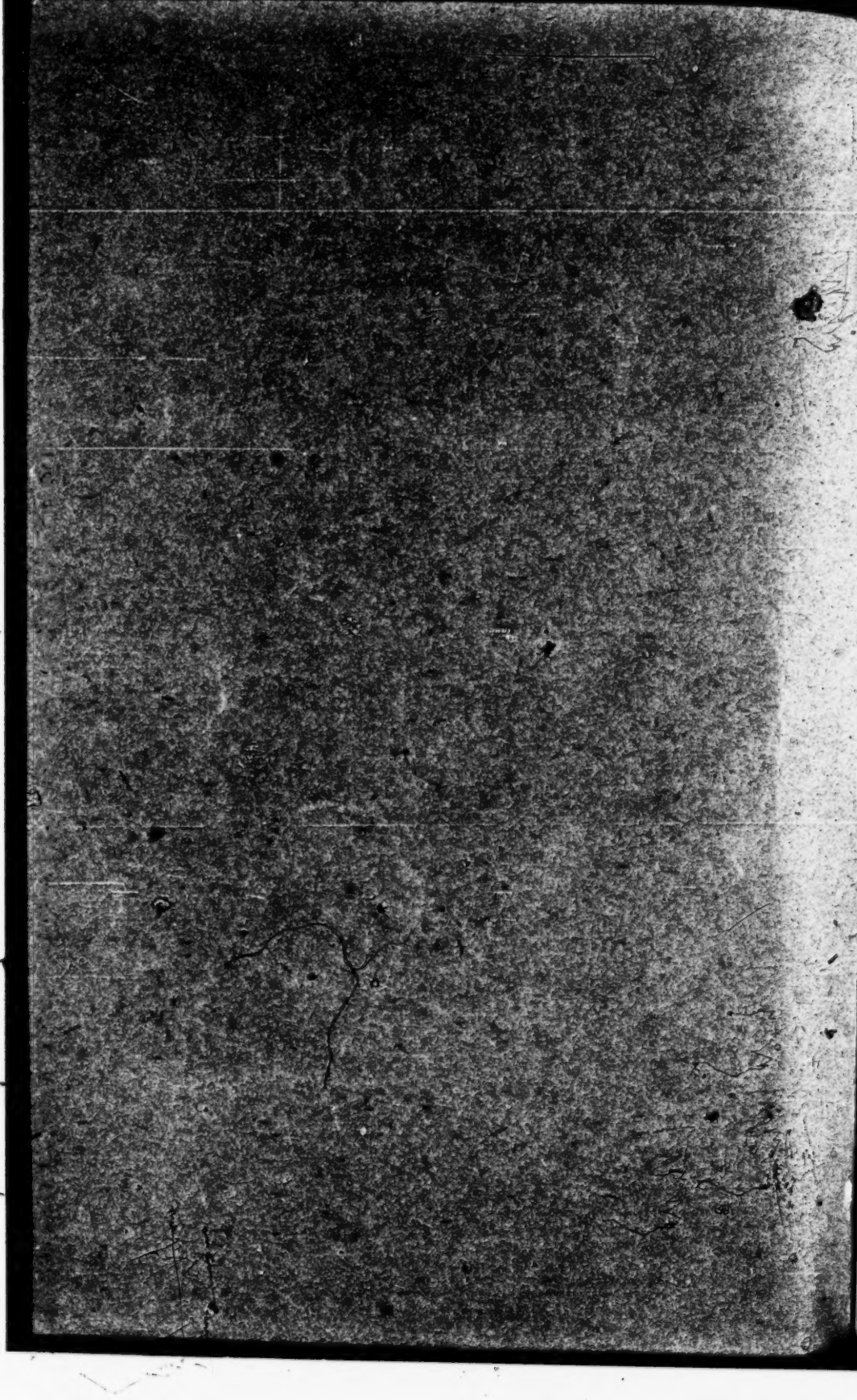
vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 28, 1929.

CERTIORARI GRANTED FEBRUARY 11, 1929.



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Q. Did you sell direct to any manufacturers in that territory? A. We did.

Q. What items? A. An adaptation of a through cord switch.

Q. District No. 5? A. That comprises Buffalo and the immediate vicinity. Lloyd A. Woolley, Inc., Buffalo, not a common customer and continued sales.

Q. District No. 6? A. That takes in Rochester. Requa Electrical Supply Co., Rochester, a common customer and continued sales.

Electric Supply Sales Co., Rochester, not a common customer and continued sales. 1538

Q. Did you sell to any manufacturer in that territory? A. We did.

Q. What item? A. Can I consult on that with the man who had more to do with it than I did?

Q. Certainly.

(Discussion off the record.)

A. Attachment plugs and push and pull switches, which are described in the Arrow catalogue.

Q. District No. 7? A. That takes in Syracuse and the surrounding towns. Baldwin Hall Co., Syracuse, not a common customer and continued sales. 1539

H. J. Gorke, not a common customer and continued sales.

Q. Did you make any sales to Crouss-Hinds in that territory? A. Yes, standard catalogue items for their fittings.

Q. That concern was a common customer? A. Yes.

Q. District No. 8? A. That takes in Utica and vicinity. The Miller Electric Co., Utica, not a common customer and continued sales.

1540 *Harvey C. Pond—Direct.*

Q. You sold to other distributors, but they were rather small sales, is that correct? A. We sold to one other.

Q. Did you make any sales direct to manufacturers in that territory? A. We did.

Q. What items? A. An adaptation of a socket for use in an electric fan; attachment plugs, heater switches.

Q. District No. 9? A. New Jersey.

Q. The principal customers? A. Eastern Electric Supply Co., Newark; a common customer and
1541 continued but constantly fading out sales.

Q. Just a few sales in 1930? A. Yes.

Q. Just a few sales in 1929? A. Yes.

Star Electrical Co., Newark; not a common customer and continued sales.

Dean Electric Co., Morristown; not a common customer and continued sales.

Rutkin Electric Supply Co., Long Branch; not a common customer and continued sales.

Newark Light Co., Newark; not a common customer and continued sales.

Q. Just a moment, on that Newark. The sales gradually diminished, until in 1929 and 1930 they
1542 were rather small? A. That is true.

Monarch Electrical Supply Co., Newark; a common customer and continued, but very much diminished sales.

Q. Power Electric Co., Newark. A. A common customer, but diminishing sales.

Q. New Jersey Electric Supply Co. A. New Jersey Electric Supply Co.; a common customer and continued but diminishing sales.

Q. Did you make any sales to manufacturers direct in that territory in 1927? A. No.

Q. District No. 10? A. District No. 10 was Philadelphia—eastern Pennsylvania and Delaware.

Q. Atlantic City? A. And Atlantic City, N. J.

Philip Cass & Co., Philadelphia, not a common customer and continued sales.

Garrett Miller & Co., Wilmington, Del.; a common customer and continued sales.

Q. John Y. Parke Co., Philadelphia? A. A common customer, and continued sales.

Royal Electric Supply Co., Philadelphia; a common customer and continued sales.

Q. Did you make some sales to the Rumsey Electric Co. in Philadelphia? A. Yes. A common customer and continued sales. 1544

Q. Also to Walker & Kepler? A. Yes. A common customer and continued sales.

Q. District No. 11? A. That takes in western Pennsylvania and West Virginia.

Doubleday-Hill Electric Co., Pittsburgh; a common customer and continued sales.

The Front Co., Wheeling, W. Va.; a common customer and continued sales.

Pittsburgh Electric & Manufacturing Company; a common customer and continued sales.

Keps Electric Supply Co., Pittsburgh; a common customer and continued sales. 1545

Q. Did you make any sales to the Iron City Electric Co. in Pittsburgh? A. We did, but very small. They were a common customer and we continued sales.

Q. How about the Incandescent Supply Co.? A. Incandescent Supply Co., Pittsburgh, yes. Not a common customer and continued sales.

Q. The Price Electric Co.? A. The Price Electric Company; a common customer, but diminishing sales.

Q. Diminishing particularly in 1930? A. Yes, they went to Hart & Hegeman chiefly.

Q. Will you state why you discontinued to sell them? A. They got into a disagreement with our New York manager on a price concession.

Q. District No. 12? A. That comprises the coal mining parts of Pennsylvania—Scranton and Wilkes-Barre.

Thom Berg Electric Supply Co., Wilkes-Barre; a common customer and continued but diminishing sales.

1547 Jere Wandring & Co., Hazleton, Pennsylvania; not a common customer and continued sales.

Scranton Electric Supply Co., Scranton, Pennsylvania; not a common customer, and continued sales.

Q. District No. 13? A. That comprises the central part of Pennsylvania; Harrisburg, Lancaster and Allentown.

Coleman Electric Co., Allentown; not a common customer, and continued sales.

Camarkley Electric Supply Co., Harrisburg, Penna.; not a common customer and continued sales.

Q. District No. 14? A. No. 14, that takes in

1548 Erie, Pa.

Star Electrical Co.; a common customer and continued sales.

Q. District No. 15? A. That is West Virginia. Only one here that amounts to anything.

E. Hawkins Hardware Co., Huntington, W. Va.; not a common customer and continued sales.

Q. Did you sell to any manufacturers in that territory? A. We did.

Q. What item? A. Heater switches.

Q. Will you state the total volume of sales in the New York territory for the period 1926 to 1930, inclusive? A. 1926, $1,107,680.

1927, $957,372.

1928, $855,736.

1920, $884,674.

1930, $720,827.

Q. I show you a tabulation of sales to individual customers by schedules by the Arrow Electric Division in the New York territory for the years 1926 to 1930, inclusive, and ask you whether or not the tabulations contained therein correctly state the 1550
distribution of sales to the customers indicated by number as indicated by the schedule letters thereon? A. With the assumption that they were taken from our records, I do.

Examiner Reeves: This document, consisting of four pages, is received in evidence as Commissioner's Exhibit Number 90.

(The document was thereupon received in evidence and marked "Commission's Exhibit Number 90.")

Q. How many districts has your Baltimore territory? A. 8 districts. 1551

Q. District No. 1 comprises what? A. You are still talking of 1927?

Q. 1927, yes. A. District No. 1 took in Maryland.

Q. Who were your leading distributors? A. Baltimore Electric Supply Co., Baltimore; a common customer and continued sales.

Atlantic Electric Supply Co., Baltimore; not a common customer and continued sales.

1552 *Harvey C. Pond—Direct.*

The Carroll Electric Co., Baltimore; not a common customer and continued but diminishing sales, because they dropped that branch office. Now they have sold out to the Graybar Co. at Washington.

Q. District No. 2? A. District No. 2 takes in Washington, D. C.

Doubleday-Hill Electric Co.; a common customer and continued but diminishing sales.

National Electrical Supply Co.; a common customer and continued but diminishing sales.

Q. Do you know why the National Electrical
1553 Supply Co. has diminished? A. They were G. E. jobbers, and principally due to the pressure from the General Electric Co. they discontinued handling our line.

Q. Are they handling the G. E. line? A. Practically exclusively.

Q. Do they stock your goods now? A. No. They may have some in stock, but they are not buying any.

Q. District No. 3. A. District No. 3 takes in Richmond and vicinity.

Tower Brinford Electric & Manufacturing Co., Richmond; a common customer and continued sales.

1554 Q. District No. 4? A. District No. 4 takes in Norfolk and vicinity.

Q. Also Bristol? A. Yes, also Bristol.

Q. Roanoke? A. Bristol and Roanoke also, yes.

Atlantic Electric Co.; a common customer and continued sales.

Woodhouse Electric Co.; a common customer and continued sales.

Mr. Gross: Both in Norfolk?

The Witness: Both in Norfolk.

Q. District No. 5? A. The Woodhouse Electric business fell off because the Bryant Electric Co. made them better terms, and we would not meet them.

Q. How did you usually sell on that? A. At flat net prices.

Q. And the Bryant Company made better terms in credit? A. Yes.

Q. District No. 5? A. That takes in North Carolina.

Q. Who were your principal distributors? A. Caroline State Electric Company; a common customer and continued but diminishing sales, Charlotte, N. C. 1556

The Piedmont Electric Co., Ashville, N. C.

I am not sure whether that Carolina State was a common customer. It was taken over by this other concern later on. The Piedmont Electric Co. was not a common customer and there were continued but diminishing sales, because they went out of business,—failed.

Graybar Electric Co., Charlotte; a common customer and continued but diminishing sales.

Q. District No. 6? A. District No. 6 takes in South Carolina.

Mann Electrical Supply Co., Columbia, S. C.; not a common customer and continued sales; sales diminishing, also on account of credit conditions. 1557

Montgomery & Crawford, Spartanburg, S. C.; not a common customer and continued sales.

Q. Carolina Electric Supply Co.? A. Yes, I think they are in Charleston; not a common customer and continued but diminishing sales. They are out of business.

Q. District No. 7? A. Fulton Electric Co., Atlanta; a common customer and continued sales.

1558 *Harvey C. Pond—Direct.*

Graybar Electric Co., Atlanta; a common customer and continued but diminishing sales.

Southern Electric Supply Co., Atlanta; not a common customer and continued sales.

Q. Did you sell anything direct to manufacturers in that territory? A. We did; heater switches.

Q. District No. 8? A. District No. 8 takes in Florida. Jacksonville Electric Supply Co., Jacksonville, Florida; not a common customer and continued sales.

Knight & Wall Co., Tampa; not a common cus-
1559 tomer and continued sales.

Robertson Supply Co., Orlando, Florida; a common customer and continued sales.

Q. Will you state the total volume of sales annually in the Baltimore territory, which you have just covered, for the years 1926 to 1930, inclusive? A. 1926, $240,517; 1927, $140,751; 1928, $125,929; 1929, $102,208; 1930, $83,650.

Q. I show you a tabulation of sales to selected customers by schedules of the Arrow Electric Division in the Baltimore district in the years 1926 to 1930, and ask you whether or not this correctly states the distribution of products sold by the Ar-
1560 row Electric Co. according to the schedules indicated during those years, and to the customers whose names do not appear but are represented by numbers? A. On the assumption that they came from our records, I do.

Mr. Haycraft: I offer it in evidence.

Examiner Reeves: This tabulation, consisting of two pages, will be received in evidence as Commission's Exhibit No. 91.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 91".)

1561

Q. Into how many districts is the Chicago territory divided? A. 26.

Q. District No. 1 includes what? A. Alabama.

Q. Go on with your answer, please. A. And Louisiana.

Interstate Electric Co., New Orleans; a common customer and continued sales.

Interstate Electric Co., Shreveport; a common customer and continued sales.

Interstate Electric Co., Birmingham; not a common customer and continued sales up to 1930, when I think the branch was discontinued.

1562

Q. District Nos. 2 and 3? A. District Nos. 2 and 3 take in Colorado, New Mexico, Utah, Montana, Idaho.

Central Electric Supply Co., Denver, Colorado; not a common customer and continued sales.

B. C. Wattson, Denver; a common customer and continued sales.

United Electric Supply Co., Salt Lake City, Utah; not a common customer and continued sales.

Q. District No. 4? A. District No. 4 includes Chicago and vicinity.

Q. Proceed. A. Dealers and Jobbers Electric Supply Co., Chicago; not a common customer and continued sales, though diminishing.

1563

Q. Entirely out in 1930? A. Entirely out in 1930.

Englewood Electrical Supply Company; a common customer and continued sales.

Hawkins Electric Company; a common customer and continued sales.

Hyland Electric Supply Company; a common customer and continued sales. All those are in Chicago.

Metropolitan Electrical Supply Co., Chicago; a common customer and continued sales.

1564 *Harvey C. Pond—Direct.*

Otto Reiman, Chicago; not a common customer and continued but diminishing sales.

Effengee Electric Supply Co., Chicago; a common customer and continued sales.

Triangle Electric Co., Chicago; a common customer and continued sales.

Harry Alter Co., not a common customer and continued sales. The name was later changed to the Harrison Wholesale Company.

Peerless Light Company; not a common customer and continued sales, although they faded out in
1565 1928,—failed.

Q. The Graybar Electric Co. Did you sell to that firm substantially in 1927? A. Graybar Electric Co., a fair volume; a common customer and continued sales.

Bright Light Co., Chicago; not a common customer and continued sales.

Q. Ropke Electric Company? A. Ropke Electric Company; not a common customer and continued but diminishing sales.

Q. Did you make any sales direct to manufacturers in Chicago in 1927? If so, what devices? A. Yes. Standard catalogue material; manufacturers'
1566 fittings, corresponding to Crouss-Hinds; attachment plugs and heater switches.

Q. District No. 5? A. Illinois outside of Chicago. Danville Electric Supply Co., Danville, Ill.; a common customer and continued sales.

Universal Electric Co., Peoria; not a common customer and continued sales.

Resco Electric Supply Company; continued, but diminishing sales. I don't know where they are.

Q. Did you sell anything direct to manufacturers in that territory in 1927? A. Yes.

Q. What items? A. Heater switches.

1567

Q. District No. 6? A. Indiana. Advance Electric Co., Terre Haute; not a common customer and continued sales.

Protective Electric Supply Co., Fort Wayne; a common customer and continued sales.

Van Camp Hardware & Iron Co.; not a common customer and continued sales.

Goshen Electric Material Co., Goshen, Ind.; no further sales; not a common customer.

Q. Do you know why? A. I don't.

Q. Did you sell direct to any manufacturers in that territory during that year? A. Yes. Attachment plugs and heater switches.

1568

Q. Districts Nos. 7 and 8? A. Iowa. House of Downing; not a common customer and continued but diminishing sales, Des Moines, Iowa. I think they were taken over by Westinghouse.

Crescent Electric Supply Co., Dubuque, Iowa; not a common customer and continued sales.

Waterloo Electric Supply Co., Waterloo, Iowa; not a common customer and no further sales. I don't know why.

Q. District No. 9? A. That takes in Missouri, outside of St. Louis, Kansas, and Oklahoma.

Belden Electrical Supply Co., Joplin, Mo.; a common customer and continued but diminishing sales.

1569

Missouri Valley Electric Co., Kansas City, Mo.; continued sales, but not a common customer.

United Electric Supply Co., Wichita, Kansas; not a common customer and continued sales.

Huntzicker Bros., Oklahoma City, Oklahoma; not a common customer and continued sales.

Q. District No. 10? A. St. Louis. Brown & Hall Supply Co.; not a common customer and continued sales.

1570 *Harvey C. Pond—Direct.*

Glasgow Electric Co.; not a common customer and continued sales.

United Electric Supply Co.; not a common customer and continued sales.

Lance Electric Supply Co.; a common customer and continued sales.

Q. Were there any sales made direct to manufacturers in St. Louis in 1927? A. Yes. Standard Ceiling Pull Switch for use in fans.

Q. District No. 11? A. District No. 11 takes in Kentucky, and I think the southern part of Indiana.

1571 Belknap Hardware & Manufacturing Co., Louisville, Kentucky; not a common customer and continued sales.

Q. District No. 12? A. Detroit, Mich. and Pontiac.

Cadillac Electric Supply Company; not a common customer and continued sales. Detroit.

Lake States General Electric Supply Co., Detroit; not a common customer and continued but diminishing sales. They were bought out by the General Electric Co.

Michigan Chandelier Co., Detroit; not a common customer and continued sales.

1572 H. M. Hawkins Electric Supply Co.; not a common customer and continued sales.

Victor Electric Supply Co., Detroit; not a common customer and no further sales.

Q. Do you know why? A. I think they sold out.

Q. Did you make any sales in 1927 to the Henry Walker Co. in Detroit? A. We did; a common customer and continued but diminishing sales. That was due to our sales policy in putting on two or three others, which they did not approve of.

Q. District No. 13? A. Michigan outside of Detroit and Pontiac.

Q. Capitol Electric Supply Co.? A. Capitol Electric Supply Co.; a common customer and continued sales.

Schmerheim Electric Co., Saginaw; not a common customer and continued sales.

Ackerman Electric Supply Co., Grand Rapids; not a common customer and continued sales.

Q. Districts Nos. 14, 15 and 16? A. Minnesota.

Kelley Howe Thompson & Co., Duluth; not a common customer and continued sales.

Ensign Electric Co., Minneapolis; not a common customer and continued sales.

Northland Electric Supply Co., Minneapolis; not 1574
a common customer and continued sales.

Janney-Semple-Hill & Co., Minneapolis; not a common customer and continued sales.

Price Electric Co., St. Paul; not a common customer and continued sales.

Q. District No. 17? A. Nebraska. Enterprise Electric Co., Lincoln; not a common customer and continued sales.

Grander Electric Co., Omaha; not a common customer and continued sales.

Paxton & Gallagher, Omaha; not a common customer and continued sales.

Q. District No. 18? A. Cincinnati and vicinity. 1575

Johnson Electric Supply Co., Cincinnati; not a common customer and continued but diminishing sales.

Schuster Electric Co., Cincinnati; not a common customer and continued sales.

Q. District No. 19? A. District No. 19 consists of that part of Ohio around Dayton and Columbus.

McCleary Carpenter Electric Co., Columbus; not a common customer and continued sales.

Q. Did you sell direct to any manufacturers in that territory? A. We did. Heater switches.

Q. District No. 20? A. Cleveland and adjacent to Cleveland.

The Frankelite Co., Cleveland; not a common customer and continued sales.

Q. Did you sell direct to any manufacturers in that territory? A. We did. Hot plate switches.

Q. Did you sell to some other jobbing accounts also? A. Yes.

Q. To the George Worthington Company? A. We did. A common customer and continued sales.

Q. District No. 21? A. Toledo. Bostwick Braun
1577 Co., a common customer and continued sales.

Commercial Electric Supply Co., Toledo; not a common customer and continued sales.

Q. Any direct sales to manufacturers? A. Yes; heater switches.

Q. District No. 22? A. District No. 22 takes in, I would say, the southeastern part of Ohio.

The Electric Sales Co., Canton, Ohio; not a common customer and continued sales.

The Hood Electric Co., Youngstown, Ohio; not a common customer and continued sales.

The Sacks Electric Supply Co., Akron; not a common customer and continued sales.

1578 Q. Did you sell anything direct to manufacturers in that territory during 1927? A. Yes; heater switches.

Q. District No. 23? A. South and North Dakota.

Tri-State Electric Co., Sioux Falls, S. D., not a common customer and continued and increasing sales.

Q. District No. 24? A. Tennessee.

Herbirck & Lawrence, Nashville, Tenn.; not a common customer and continued sales.

C. M. McClung & Co., Knoxville; not a common customer and continued sales.

1579

Q. District No. 25? A. No. 25 takes in Texas.

Smith-Perry Electric Co., Dallas; a common customer and continued and increasing sales.

Waco Electric Supply Co., Waco, Texas; not a common customer and continued sales.

Economy Electrical Supply Co., Fort Worth, Texas; not a common customer and continued sales.

Roberts Empire Electric Supply Co., Houston, Texas; a common customer and continued sales.

Southern Equipment Co., San Antonio, Texas; a common customer and continued sales.

Q. District No. 26? A. Wisconsin.

1580

Boggin Johnson Electric Co.; not a common customer and continued sales, Milwaukee.

August H. Meyer; Oshkosh; not a common customer and continued sales.

Murphy Supply Co., Green Bay, Wisconsin; not a common customer and continued and increasing sales.

Q. Now, will you state for the record the total volume of sales in the Chicago territory which you have just covered in the years 1926 to 1930, inclusive. A. 1926, $1,524,220.

1927, $1,392,503.

1928, $1,346,384.

1929, $1,374,944.

1581

1930, $1,006,280.

Q. I show you a tabulation of sales to selected customers by schedules in the Chicago territory of the Arrow Electric Co. for the years 1926 to 1930, inclusive, and ask you whether or not this correctly states the division of sales to the customers indicated by number thereon? A. On the assumption that it is taken from our records. I do.

1582 *Harvey C. Pond—Direct.*

Mr. Haycraft: I offer it in evidence.

Examiner Reeves: This tabulation, consisting of ten pages, is received in evidence as Commission's Exhibit No. 92.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 92.")

Q. How many districts is the San Francisco territory divided into, including Honolulu? A. Seven.

Q. District No. 1? A. Northern California.

1583 Q. Go ahead. A. California Electric Supply Co.; not a common customer and continued sales. That is in San Francisco.

C. H. Carter Co., Sacramento; not a common customer and continued sales.

Gilson's, Ltd., Oakland; not a common customer and continued sales.

Incandescent Supply Co., San Francisco; not a common customer and continued but diminishing sales.

Service Electric Supply Co., San Jose; not a common customer and continued sales.

Y. & B. Jones, San Francisco; no further sales and not a common customer.

1584

Thomson Diggs Co., Sacramento; not a common customer and continued sales.

Guilberts Wholesale Electric Co., Fresno; not a common customer and continued sales.

Wholesale Electric Co., San Francisco; not a common customer, and no further sales.

Q. Do you know what happened? A. I do not.

Baker Joslyn Co., San Francisco; continued and diminishing sales after 1928; not a common customer.

Peerless Light Co., San Francisco; not a common customer and continued but diminishing sales.

Thelan Electric Supply Co. I imagine they are in Oakland; continued but vanishing sales; not a common customer.

Q. District No. 2? A. District No. 2 takes in southern California.

The Electric Corporation, Los Angeles; common customer and continued but diminishing sales.

Electrical Supply & Distributing Co., San Diego, California; not a common customer and continued but diminishing sales.

L. B. Marsh Electric Supply Co., Long Beach, 1586
California; not a common customer and continued sales.

Meyers Electrical Supply Co., Los Angeles; not a common customer and continued but diminishing sales.

Reiman Wholesale Electric Co., Los Angeles; not a common customer and continued sales.

California Wholesale Electric Co.; a common customer and continued sales. They are in Los Angeles.

Cook-Nichols Co., Los Angeles; not a common customer and continued sales.

Baker Electric Co., Los Angeles; continued sales, 1587
which developed after 1928; not a common customer.

Q. There were a number of other smaller distributors in that territory that your firm sold to, but not in substantial quantities? A. Yes.

Q. Were there any direct sales to manufacturers? A. Yes, sir. Attachment plugs.

Q. District No. 3? A. District No. 3 is Oregon.

The Electric Corporation, Portland, Oregon; a common customer and continued sales.

1588 *Harvey C. Pond—Direct.*

Q. There were smaller distributors in that territory to which you sold, but not in substantial quantities? A. Yes, but not in substantial quantities.

Q. Districts Nos. 4, 5 and 6? A. The State of Washington.

Burghart & Huff Electric Co., Seattle; continued sales but not a common customer.

The Electric Corporation, Seattle; a common customer and continued but diminishing sales.

Globe Electric Co., Seattle; continued sales. They
1589 are common customers.

Love Electric Co., Tacoma, Washington; common customer and continued sales.

Q. There are other distributors in that territory which your firm sold, but not in substantial quantities? A. Correct.

Q. District No. 7? A. Hawaii.

Leves & Joaquin, Ltd.; not a common customer and continued sales.

Q. Will you state for the record the total volume of sales annually of the Arrow Company in the San Francisco territory, 1926 to 1930, inclusive? A. 1926, $462,989.

1590 1927, $397,400.

1928, $374,319.

1929, $313,885.

1930, $283,975.

Q. Have you the total domestic figures for the whole United States? A. $1926, $3,825,712.

1927, $3,300,416.

1928, $3,120,033.

1929, $3,068,026.

1930, $2,467,998.

Q. I show you a tabulation showing sales to selected customers by schedules of the Arrow Electric

1591

Co., and later the Arrow Electric Division, for the San Francisco territory, 1926 to 1930, and ask you whether or not this tabulation correctly states the division of products sold to the customers indicated thereon by number. A. On the assumption that those were taken from our records, I do.

Mr. Haycraft: I offer it in evidence.

Examiner Reeves: This tabulation, consisting of four pages, is received in evidence as Commission's Exhibit No. 93.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 93.") 1592

Q. I show you these tabulations which have been received in evidence as Commission's Exhibits 89 to 93, inclusive, and ask you whether or not the asterisks on those mean common customers with the Hart & Hegeman Manufacturing Company? A. They do.

Q. I will ask you to examine them for each territory and state whether or not, from your knowledge of the business, the division of your sales, according to the schedules, to the customers indicated in those tabulations, is representative of the 1593 business in those territories during those years. A. As far as I can judge, I should say they do.

Q. When were you made vice-president in charge of sales of the new respondent? A. About nine months ago.

Q. And what changes, if any, did you make in your organization at that time? A. None.

Q. You were sales manager of the Arrow Electric Co. from January 1, 1929, and then you continued as sales manager for the Arrow Division of

1594 *Harvey C. Pond—Direct.*

the new respondent, is that correct? A. That is correct.

Q. And then, about nine months ago, you were made vice-president in charge of sales of both divisions, is that correct? A. That is correct.

Q. At the time you assumed your duties as sales manager of both divisions, what did you do different from what you had been doing? A. Practically nothing. It was more of a courtesy than otherwise. We tried to preserve the structure, both inside and outside, of the organization, and preserve the sepa-

1595 rate sales organizations as far as possible.

Q. Well, did you make any changes in your branch offices? A. We made changes in the branch offices nine months ago. That would be about November, 1930, and, to the best of my recollection there have been no changes so far as branch offices are concerned since I was made sales manager for both divisions, with the exception of the Chicago office. There were changes made prior to that time.

Q. Who was general sales manager then? A. There was no such thing.

Q. Is it true that in the Boston office the pres-

1596 ent sales agent there is in charge of the salesmen working under the Arrow Division and the Hart & Hegeman Division also? A. That is true.

Q. When was that— A. I can tell you the various changes and when they were made.

Q. Yes, that is what I am trying to get at. A. On July 1, 1930, by a conference of the various sales executives, including Mr. Cook, Mr. Everest, myself, and Mr. Grier, we appointed Mr. Alexander, who had formerly been the H. & H. manager in Philadelphia, joint manager for both the Arrow and the H. & H. for the territory which he formerly

covered for H. & H. This included the old Baltimore territory, which office and territory had been eliminated on January 1, 1930, and it included the old New York Arrow territory, except for New York State and the New York metropolitan area.

On that same day, July 1, 1930, Mr. Deacon was made joint manager of the metropolitan New York area and relinquished his jurisdiction over the Arrow business in New York State as well as in the territory controlled from Philadelphia and the former Baltimore territory.

On that same date, July 1, 1930, Mr. G. S. Went- 1598
worth was made joint manager for both divisions for Upper New York State.

Q. With headquarters where? A. Headquarters at Syracuse. I might say that these moves were all precipitated to a very large extent by the death of the H. & H. New York manager, Mr. Wilson, who died in March, 1930.

The next move was on September 1, 1930, when Mr. A. C. Nelson was made joint manager for New England. The former H. & H. manager, J. W. Saladine, came to Hartford to take up promotional work. Mr. Nelson was the former Arrow manager for that territory.

1599

On that same day, September 1, 1930, Mr. Paul Ramsey, located at Atlanta, Ga., was made joint manager for both divisions for the newly created southern territory, relieving Mr. J. A. Alexander in the East and Mr. Wildauer and Mr. Lubeck in the West of the territory which he then took over.

Q. Will you give us the extent of that territory now? A. That territory, the newly created territory, takes in the States of South Carolina, Georgia, Florida—which would formerly come under the Philadelphia office—Alabama, Mississippi, Ten-

1600 *Harvey C. Pond—Direct.*

nessee, Arkansas, Louisiana, and Texas, which were formerly supervised from Chicago.

Q. Mr. Ramsey was the former H. & H. man? A. He was a former Arrow salesman. On March 1, 1931, the old Chicago territory was split into a central territory, comprising the States of the southern tier of Michigan, Indiana, Ohio and Kentucky, and Mr. A. E. Lubeck, formerly western manager for H. & H., was made joint manager for that central territory, with headquarters at Detroit, and on the same date Mr. R. L. Wildauer,
1601 the former Arrow western manager at Chicago, was made joint manager of the western territory, with headquarters at Chicago. That western territory consisted of all the states in the former Chicago territory except those newly assigned to the central territory and more recently assigned to the southern territory.

Q. No changes were made on the Pacific Coast? A. No changes were made.

Q. Two separate representatives? A. Two separate representatives.

Q. This last change, was that made by you or the same officials that made the other changes? A.
1602 The same officials that made the other changes.

Q. Who was in charge at Baltimore? A. The Baltimore office was discontinued on January 1, 1930, by the Arrow Electric Co., and that territory was put under the supervision of the Arrow New York manager, A. P. Deacon. Mr. Green, former manager, was put on the pension list.

Q. How many men then are working now for the corporation, for both divisions? A. Mr. Everest has the figures for the Hart & Hegeman Division, which he has offered in evidence.

1603

Q. Yes, I think he has. How many for Arrow? A. For the Arrow Division now, there were eight joint managers, one full manager, 27 men, and one commission agent.

Q. What do you mean by one full manager? A. San Francisco.

Q. And where is the commission agent? A. He is working, to a certain extent, as a salesman under our Chicago manager, the Western manager, at Denver.

Q. That is the— A. The firm name is Bacon, and he is also representing Hart & Hegeman.

1604

Q. Both? A. Both, at Denver.

Q. Was the matter of sales expense under your supervision? A. Except a little to do with it, except in a general way as to branch managers, subject to approval or disapproval of his office.

Q. Just what are your duties and responsibilities, Mr. Pond, at the present time? A. More or less general executive head for consultation purposes.

Q. Who is responsible to you and who reports to you? A. Well, Mr. Everest continues to sign the letters going out for the Hart & Hegeman Division. We try to preserve that identity, and he reports to me. Mr. Barry consults with me, and the district managers also consult with me.

1605

Q. Are they required to make any reports to you in respect to this entire territory and sales? A. Just as matter of news.

Q. Do they consult you or report to you any change in policy or anything of that kind? A. Policy matters, I think, they would take up with me. As to the handling of individual accounts, they more or less would run their own territory.

Q. Do you give any instructions as to the trade or the class of trade that the salesmen are to call on? A. No.

Q. That is left up to the branch managers? A. Yes, that is left to the branch managers.

Q. Have you, independently or with your associates, determined upon the policy as to whether or not the salesman attached to the Arrow Division shall call upon recognized customers of the Hart & Hegeman Division, or vice versa, at the present time? A. No, we left that entirely up to the branch

1607 manager.

Q. In other words, you looked to him for results? A. Absolutely.

Q. You are not interested in whether his sales increased Arrow more than H. & H., or vice versa, so long as he sells the goods? A. No.

Q. What is this I hand you now, Mr. Pond? A. That is a list, recently issued, about a month ago, giving the catalogue numbers of certain competitors, with our equivalent numbers, for use by distributors and our salesmen, so they can substitute our H. & H. or Arrow material and give the same specified material.

1608 Q. And the items which are numbered in this pamphlet are comparatively the same items used for the same purpose? A. Used for the same purpose.

Q. It won't necessarily follow that they are the same price? A. No, or the same equivalent size or dimensions.

Q. Who prepared that? A. It was prepared under the direction of our advertising department.

Mr. Gross: Published when?

The Witness: A month ago. I might say that there is nothing particularly new about

1609

that idea. It is similar to the idea which is already in the General Electric catalogue, and we ourselves had prepared one in 1919.

Examiner Reeves: This pamphlet is received in evidence as Commission's Exhibit No. 94.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 94".)

Examiner Reeves: The hearing will be adjourned to Friday, May 29, at 10 o'clock A. M., daylight saving time.

(Whereupon, at 5.20 P. M., daylight saving time, an adjournment was taken to 10 o'clock daylight saving time, May 29, 1931.)

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1612 *Harvey C. Pond—Cross.*

Conference room, Arrow-Hart & Hegeman Electric Co., 103 Hawthorne Street, Hartford, Connecticut.

May 29, 1931.

Met pursuant to adjournment 10 A. M., daylight saving time.

Before—WILLIAM C. REEVES, Examiner.

1613 APPEARANCES:

E. F. HAYCRAFT, attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of Gross, Hyde and Williams, 49 Pearl Street, Hartford, Connecticut, attorneys for the respondent.

PROCEEDINGS.

Examiner Reeves: Gentlemen, you may pro-
1614 ceed.

HARVEY C. POND, resumed.

CROSS EXAMINATION BY MR. GROSS:

Q. During the fifteen months' period, Mr. Pond, covered by the agreement, the existence of the old respondent, that is, from October, 1927, to December 31, 1928, was there any change in the sales policy of the Arrow Electric Company, of which you were the sales manager? A. There was not.

Q. Prior to October, 1927, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company were in full and complete and free competition on their shelf catalog goods? A. They were.

Q. Did that policy continue during that fifteen months' period? A. It did.

Q. Were there two sales organizations, absolutely and completely distinct and separate? A. They were.

Q. During that period the Hart & Hegeman Manufacturing Company still operated in separate offices in the other building on Capitol Avenue? A. They did. 1616

Q. During that time, did you ever receive any instructions from any superior officer in the Arrow Electric Company, or from any officer of the old respondent, the holding company, to change the sales policy of the Arrow Electric Company with reference to the Hart & Hegeman Sales organization or customers? A. No. On the contrary, the orders I have had were to stimulate the competition.

Q. No one ever gave you any orders to keep away from Hart & Hegeman customers through your sales force? A. No, sir.

Q. During that time did your salesmen solicit as freely from all prospective customers in the trade as before? A. They did. 1617

Q. By virtue of your office, and as general sales manager of the new respondent, I presume that you are now familiar with the articles which have been referred to herein as the appliance line which were made in 1927 by the Hart & Hegeman Manufacturing Company?

Mr. Haycraft: That is objected to as not proper cross examination.

1618

Examiner Reeves: Will you read the question?

(The last question was read by the reporter.)

Mr. Gross: My purpose, if your Honor please, is, on cross examination on the question of this competition, to find out what the line was. That is a preliminary question.

Mr. Haycraft: I have no objection to your making him your own witness. I did not go into that, except the goods that were listed in the catalogs.

1619

(Discussion off the record.)

Mr. Gross: May I say that the witness yesterday was asked to take the two lines of goods as they were visualized in the two catalogs, and my learned friend, representing the Commission, very frankly put in through Mr. Pond, not only those things which were in competition, but very willingly showed what lines of switches, for example, that Hart & Hegeman made to some extent that were not in competition. It is to get the complete picture, which we have not got from those two catalogs. There is a very extensive line of the Hart & Hegeman

1620

Company which was not competitive.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

(The last question was read by the reporter.)

A. I am.

Q. Did the Arrow Manufacturing Company to any extent manufacture any of the articles similar in line to those appliances which were then made by the Hart & Hegeman Manufacturing Company?

A. You mean the Arrow Electric Company?

Q. Yes, the Arrow Electric Company? A. Well, we had a vague idea that there was business to be had in that class of material, and we started out to see if we could not dive into the facts and dig up some business for ourselves, and the net result was that we manufactured, all told, in 1927 probably between eight and ten thousand of the trigger switch type. They were not suited to the trade; a lot of them were returned as not being suitable and others were returned because they were defective, and we came to the conclusion that it was not our scope of manufacture. We did not have the personnel, either in the engineering department or in our factory or in our outside or inside sales organization, to handle that particular class of business. Our history back of this time, or up to this time, has been one of mass production of staple devices. Our outside sales organization was not prepared to give our engineering departments facts in such a manner as to properly present them to the public and to the user, and we just made a complete flop in our feeble and small attempt to get into that business.

Q. Now, the question of your heater switches, which, as I understand, is a catalog line, or was in 1927: Will you develop the history of the Arrow Company's development of that, first, as a catalog article, and then how it has been further developed through the two or three periods into which this inquiry is divided in point of time. A. The heater switch catalogs, as I recall it, first were brought out away back as far as 1923 or 1924.

We tried to incorporate in the heater switch the same ideas that we had in the production of our other staple commodities; in other words, a standardized line, with enough different sizes and am-

1624 perages to cover the field and the requirements of the field, so that again we could put into mass production, what we called a stock item, and manufacturing it along similar lines as we did our regular catalog materials. We also brought this out in a separate catalog, with the intention of keeping it apart from the jobbing field so far as we could, because we felt our competition is such that we might have to sell direct to the manufacturers to get this business, but still it would come under staple and mass production.

1625 We have since found that it could not be so classified; that the requirements of the trade were different; it could not be done in mass production, and each customer's requirements were so different that it has been developed into an appliance or speciality business. In other words, it is done from blue prints rather than from catalogs to-day. Our first ideas were completely upset.

There is an exhibit in one of the catalogs a part of this heater switch line, that is, on our standard catalog, but that was a special adaptation for special use, and they are standard production items. The volume of that business in that class of com-

1626 modity is for use with electric ranges, hot plates, and of similar character, where the jobber does not come very much into the picture.

Q. Can you bring it down more specifically in point of periods from the period prior to 1927, or the fifteen months' period, or the period of the merged corporation, and when these—be more specific in your experience when coming to the recognition of the fact that for your business it was becoming a question of special order work for specific manufacturers on specific blue prints and detail orders in advance? A. I think this catalog, catalog

1627

number 5, reciprocating heater switches, issued May, 1928, is pretty good evidence that even up to that time we still considered it a regular stock item and production item. It has been since that period that it has developed into special fields.

Mr. Gross: Is that in evidence?

Mr. Haycraft: No, but I will offer it in evidence as "Commission's Exhibit Number 95," being a catalog issued in May, 1928, if the witness can state how long that was in effect.

The Witness: That is the last heater switch catalog that we issued, and very probably the last that we will ever issue on that class of material.

1628

Mr. Gross: I am entirely willing that my friend should introduce that as part of his series of exhibits.

Examiner Reeves: The catalog will be received as "Commission's Exhibit Number 95."

(The catalog referred to was thereupon received in evidence and marked "Commission's Exhibit Number 95.")

The Witness: It just occurs to me, just as a further answer to your question, that since the merged companies, the heater switch business has been thrown into the appliance department, which is the non-competitive department, and they are now handling that business, and will probably continue to on blue prints and special forms. In other words, that catalog is simply for reference as to what has happened in the past.

1629

Q. In other words, you treat your appliance department on these specialty devices as a non-

competitive proposition, handled by one engineering force without ever any question of competition and sales efforts in the fields between the two departments? A. That is right.

Q. Whether or not the real competition between the goods of the Hart & Hegeman Division and the goods of the Arrow division during the holding company's period of fifteen months, the old respondent, and prior to that, was competition predicated upon the respective well-known brands of the two original companies?

1631

Mr. Haycraft: That is objected to as calling for a conclusion which the Commission must draw from all the facts in the records, and cannot be answered by anyone from the witness stand.

Mr. Gross: I claim it.

Mr. Haycraft: If that question could be settled in that way, there would be no need to take testimony, and we could rest the case.

Mr. Gross: This man is an expert in the development of sales effort.

(Discussion off the record.)

1632 (The last question was read.)

Examiner Reeves: Objection sustained.

Mr. Gross: May I note an exception?

Examiner Reeves: Exception noted.

Q. Competition for the sale of manufactured products is necessarily predicated upon the consumption of goods, or there would not be any competition if the stocks on the shelves were not taken off by consumers, am I right? A. I should say you are right.

Q. Where is the ultimate competition between Hart & Hegeman goods and Arrow goods? Is it

among the jobbers or is it among the salesmen of the two divisions? A. I should say it is more in the field than in the separate organizations. For a period of years, of course, Hart & Hegeman has built up, not only its brand, but its loyal distribution in the field, just as the Arrow Electric Company has, and they had followed in a great many cases their own individual methods and their own individual policies, so that to a very great extent they are not running parallel, but along separate lines, and the jobbers who are giving us distribution on the shelf goods lines of both divisions, are very jealous of the distribution and of that line, just as any other jobber who handles other lines would be jealous of any lines that he is pushing, and the jealousy of the two sets of jobbers in the field was the real competition which, even if we wanted to stop, we probably could not stop. 1633 1634

Mr. Haycraft: I move to strike out the last part of the answer.

Mr. Gross: I claim it, Mr. Commissioner, now that he has stated as to the circumstances surrounding the rivalry between the jobbers, to get the goods which they carry into the hands of the ultimate consumer. 1635

Mr. Haycraft: Let the jobbers do the testifying. They are the ones who know. Conjecture has no place in the record.

(Discussion off the record.)

Examiner Reeves: The motion to strike is allowed.

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: An axception may be noted.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

1636 Q. In answering a question that was propounded to you as to appliance line of the Hart & Hegeman Manufacturing Company in October, 1927, at the time that the holding company was organized, you made reference to a trigger switch. Is that the only thing that you had in mind of the appliance line that the Hart & Hegeman Company was manufacturing and putting on the market? A. No, that was the only thing that the Arrow Electric Com-

1637 pany tried to get into.

Q. At that time did the Hart & Hegeman Manufacturing Company sell a heater switch? A. I think they did. We did not feel the competition very heavily. I do not think they were a big factor in the game, and they were progressing along different ideas of design than we were.

Q. Do you know whether it was sold to the same type of users that yours were? A. I am not familiar with that.

Q. But particularly, what type of manufacturers did you sell heater switches to? A. Manufacturers of electric ranges and hot plates.

1638 Q. Was that quite a substantial business? A. Very fair business, yes; a substantial business.

Q. How many years, did you say, you catalogued and sold it? A. If my memory serves me correctly, the first catalog was brought out in 1923.

Q. It was about five years that you catalogued and sold it? A. Yes.

Q. Have you any way by which you can approximate the volume? A. I think Mr. Carroll can get that for you.

Q. It was not until after the merger, or the consolidated corporation was organized, that it was

decided to put that into the appliance line and not the catalog? A. It was after the merger, not during the period of the holding company?

Q. I understood you to testify in cross examination that during the so-called fifteen months' period, from October, 1927, to January, 1929, that your instructions were to stimulate competition between your firm and the Hart & Hegeman Manufacturing Company, is that correct? A. That is correct. I think you can account for it by the fact that the two organizations were very jealous of each other, both inside and outside. There was a lot of personal 1640
feeling on the part of our sales organization, as well as on the part of the H. and H. sales organization.

Q. What did you do to carry out those instructions? A. Simply instructed all of our managers to instruct their men to go after all the business in sight.

Q. Did you tell them particularly to— A. Not particularly.

Q. To get business away from Hart & Hegeman? A. No, not particularly.

Q. Did you instruct them to make any price concession to get business from Hart & Hegeman customers? A. No, sir. 1641

Q. Did you have any particular sales policy at that time or prior to that time as to the class of trade that you would sell your Arrow products to? A. It was a very fluctuating policy. We originally started out to sell entirely through the jobbing trade, years ago, but since it has worked into a closer relationship between manufacturer and manufacturer.

Q. What was the situation prior to October, 1927? A. Prior to 1927 the distribution was prin-

cipally through the jobbers, with the exception of the heater switch business, which was more or less direct, and then competition came in from outside sources, which had to be met, and did not allow us any profit through the jobbers, and we began to sell attachment plugs in a gradual way direct to the manufacturers. That is not appliance business; it is simply a sales policy which we were forced to adopt through price conditions, to take it direct.

Q. At that time did you know that the Hart & Hegeman Company was owned by the holding com-

1643 pany? A. During the period of the holding company?

Q. Yes, during the fifteen months. A. I knew that the capital stock was in the hands of the holding company, yes.

Q. Who gave you the instructions to stimulate this competition? A. Mr. Grier.

Q. Did he give you any explanation as to why? A. Chiefly as a matter of pride in their own organization. We thought we had a pretty good sales organization, and we wanted to show the outside world or friendly competitors, that we had the goods.

1644 Q. Why did you make the change after January, 1929? A. The change in the managership?

Q. Yes. A. Chiefly for the purpose of making available a more concentrated organization, concentrating the territories which made it possible to more intensively work the smaller territories.

Mr. Hayeraft: I think that is all.

RECROSS EXAMINATION BY MR. GROSS:

Q. In response to Mr. Hayeraft's question, as to going after Hart & Hegeman business, isn't it the

fact that prior to 1927 the Arrow salesman had always gone after all the Hart & Hegeman business wherever they were able to get it away from them? A. Yes, sir.

Q. There weren't any changed instructions after the formation of the holding company or during its existence that changed that policy? A. No, sir.

Q. As a matter of fact, there were cases both ways, where one division got business from a customer of the other division? A. Yes, and I think the records will show it.

1646

Mr. Haycraft: I would like to have that demonstrated by further evidence on that point.

Q. Now, in your tabulations and remarks yesterday in response to questions by Mr. Haycraft, on sales in the various territories,—I think you called them,—of the United States, from time to time he asked you whether there were direct sales to manufacturers in a certain territory. By direct sale, you did not mean necessarily that you sold them as appliance articles? A. If I recall my answer, it was chiefly heater switches and attachment plugs. I have already outlined our policy. Direct sales were brought on by jobber competition in the field, which we had to meet or let go entirely, but it would not be classed as appliance business.

1647

Mr. Gross: That is all.

By Mr. Haycraft:

Q. Why didn't you class heater switches as appliances? A. We do now.

1648 *Edward Bosworth Grier—Direct.*

Q. Why not then? A. We thought we could work it in mass production and as a standard line. There was one chief competitor—and not the Hart & Hegeman Company,—who had all kinds of sizes, ratings, ramifications, and everything of the sort, which we thought we would meet by a so-called standardized line; to bring out a group which would meet that particular competitor, and we worked on that theory for years, and found out that it could not be done.

Q. You did do it? A. We did for a while. De-
1649 signs of the range manufacturers change so quickly that they did not want the standardized line put on their products, and we had to make up individual switches for their products.

Q. I would like to have you prepare, Mr. Pond, a list of those customers that were taken from Hart & Hegeman by the Arrow organization during that fifteen months' period of time. A. Yes. May I submit that later?

Q. Yes.

(Witness excused.)

1650 ———

EDWARD BOSWORTH GRIER, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you please give your full name? A. Edward Bosworth Grier.

Q. What is your position? A. Secretary Arrow-Hart & Hegeman Electric Company.

Q. Where do you live? A. 62 Westwood Road, West Hartford, Connecticut.

Q. In addition to being secretary of the corporation, do you have any other duties? A. I handle the Arrow advertising.

Q. How long have you done that? A. About six years.

Q. That is, you handled the advertising of the Arrow Electric Company as well as the Arrow division of the present corporation? A. I worked on the advertising for more than six years, but I would say that entirely for about six years. 1652

Q. I show you Commission's Exhibit 72 and ask if you can identify that; also Exhibit Number 88? A. I do.

Q. Did you have anything to do with the preparation of these catalogs? A. I always worked on those catalogs in small ways for about twelve years.

Q. In addition to working on the catalogs back in 1927, what else did you do with respect to advertising? A. Created advertisements.

Q. What line of advertising did you put out at that time? A. I can't remember specifically, but the same material shown in the catalog.

Q. How was it circulated? A. Through our jobbers and electrical contractors. 1653

Q. Did you do any magazine or newspaper advertising? A. In trade magazines; not newspapers.

Q. Do you have a complete set of ads that far back? A. Not a complete set, but we have ads—in other words, ads might run in six papers.

Q. You have duplicate ads? A. Yes.

Q. After October, 1927, and while the holding company was in effect,—that is, the stock of the Arrow being held by the Arrow-Hart & Hegeman,

1654 Incorporated, the old respondent in this case, did you continue to supervise the advertising of the Arrow Electric Company? A. Yes.

Q. Did you continue to advertise as you had before? A. Just exactly the same.

Q. Then, after the so-called merger or consolidation, or the formation of the new respondent, the present corporation, did you continue to carry a separate line of advertising for the Arrow Division? A. Yes, just the same as before.

Q. Do you identify this exhibit 81? A. Yes.

1655 Q. Is that your last catalog? A. Yes.

Q. And did you get up the advertising matter that corresponds to the pages in this catalog? A. We are adding new material to that catalog.

Q. *And your* advertising at the present time is for the Arrow Electric division of the Arrow-Hart & Hegeman Electric Company? A. That is right.

Q. In this advertising matter, do you feature the same products that are featured by the Hart & Hegeman division of the present respondent? A. In some instances, yes, for economy of plates.

Q. That is, all you do is use different names? A. Yes.

1656 Q. Will you state, if you can, the difference, if any, or any changes that you made in your latest issue of your catalog, exhibit 81, as compared with exhibit 88? A. Why, the catalogs are very similar; a slight difference in the arrangement, to make it more clear, and then we add new material; the catalogs are very similar.

Q. As new material, or new devices, were brought on the market, you would include them in this catalog? A. That is it.

Q. Glancing through this catalog, exhibit number 81, will you describe some of the more recent devices that you have in mind that have been put on the market that have been included in the catalog? A. Well, page 23, canopy pull switches and canopy rotary switches.

Q. Do you know whether or not those same goods are included in the new H. and H. division catalog? A. Yes, they are; I am quite sure.

Q. Go ahead. A. We tried to keep the catalog up to date, you know.

Page 42, surface tumbler switches, with Arrowtex covers, ten ampere type. 1658

Q. Is that line also included in the H. and H. division catalog? A. Yes.

Also page 42, twenty ampere type, of the same device. How recent do you mean?

Q. Well, since January, 1929. A. Oh, yes.

Page 53, tumbolier flush switches.

Q. Are they included also in the H. and H. catalog? A. Yes. Page 57, type C switches, line starting switches for motors. Those would be in the H. and H. catalog also.

Page 63, radio outlet, number 2146 type; fan-hanger outlet.

Q. That is also carried in the H. and H. catalog? 1659
A. Right. I am just trying to give you everything that is typical.

Q. Were there any items that are included in the new Arrow catalog that are not included in the new H. and H. catalog? A. I know that the catalogs are not identical so far as numbers are concerned.

Q. I am speaking with reference to the new devices that are brought out. A. I think not in the Arrow.

1660 *Edward Bosworth Grier—Cross.*

Q. Any new device that is brought out is also listed in the H. and H. catalog? A. I don't think in every case. It will be eventually, probably.

Q. Are any of the items listed now on which the H. and H. trade mark appears along with the Arrow trade mark? A. No.

Q. Do you know as a matter of fact that there are some articles that carry both the Arrow and H. and H. trade mark?

Mr. Gross: You mean on the same identical
1661 article?

Mr. Haycraft: Yes, on the same article.

A. I don't think so, but I am not sure. I think there are some devices that carry the trade mark. That is beyond me. I don't know.

Q. In the first few pages I notice a number of large pictorial representations of new devices, such as pull switches, lighting outlets, and fan hanger outlets, and so on. Those are the new things that have been brought out in the past year or so, and they are included in both catalogs, with both the same descriptive matter, except at the bottom one has Arrow division and the other has Hart & Hege-
1662 man division? A. Yes, sir.

Mr. Haycraft: That is all.

Examiner Reeves: You may cross-examine.

CROSS EXAMINATION BY MR. GROSS:

Q. On page 43, surface tumbler switches, with Arrowtex covers: You said the same thing would be in the Hart & Hegeman catalog. You did not mean the same name there, did you? A. It would not be advertised under Arrow.

BY MR. HAYCRAFT:

Q. What would be the name? A. It would be called Hegemite covers.

Q. The same device with the same type of cover but with a different name? A. Yes.

Mr. Haycraft: That is all.

ROLLIN N. PECK, was thereupon called as a witness, and having been first duly sworn, testified as 1664
follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you please state your full name? A. Rollin N. Peck.

Q. What is your address? A. 18 Townley Street, Hartford.

Q. What is your occupation? A. I am advertising manager.

Q. For what company? A. The Arrow-Hart & Hegeman Electric Company.

Q. What division? A. The Hart & Hegeman di- 1665
vision.

Q. How long have you occupied that position? A. I assumed those duties in 1927, I think it was.

Q. In other words, you were with the old Hart & Hegeman Manufacturing Company? A. Yes.

Q. I ask if you can identify this exhibit, Commission's Exhibit 67, the catalog of the Hart & Hegeman Manufacturing Company? A. Yes, that is the catalog.

Q. Did you have anything to do with the preparation of that catalog? A. Yes, I built it.

Q. I also show you exhibit 82 and ask if you can identify that? A. Yes, that is our catalog.

Q. Is that also one that you developed? A. Yes, I built that one, too.

Q. Compare the two catalogs. What would you say would be the difference? A. The difference is that the new one contained new material since the preceding catalog was issued; also, obsolete numbers have been dropped out.

Q. The numbers that have gone out of style? A. Yes.

1667 Q. In your preparation of the new catalog, who furnishes you with the material that you are to list? A. Mr. Everest and Mr. Grier.

Q. You consult with Mr. Everest and with Mr. Grier in the preparation of the subject matter that goes into the catalogs describing the new devices? A. Yes.

Mr. Gross: You are talking about the present time?

Mr. Haycraft: Yes.

The Witness: Yes.

1668 Q. I show you the first few pages of exhibit 82, some descriptive matter. Are they the same as contained in the other catalogs except for the matter at the bottom of the page? A. Yes, and the catalog numbers differ very frequently.

Q. Sometimes they are the same? A. Yes.

Q. Are there any items that are in this new catalog that are not listed in the Arrow catalog? A. Yes, there are.

Q. What numbers? A. That would require an absolute check.

Q. Just from your recollection. A. On page 35 of the H. and H. catalog, there is a much more complete line of switch and receptacle combinations than there are in the new Arrow catalog.

The flush plates listed on pages 43 to 51, inclusive, are more complete, and there are more numbers listed.

The surface snap switches, listed on pages 6 to 25, inclusive, are more complete; that is, there are more numbers, and a wider variety listed on those pages than appear in the Arrow catalog.

Q. There is no new line that has been placed in the H. and H. catalog that does not appear also in the Arrow catalog? A. I do not recall any. 1670

Mr. Haycraft: That is all.

Mr. Gross: That is all.

Thank you.

Examiner Reeves: We will take a five-minute recess.

(A short recess was taken.)

JOHN R. COOK, was thereupon called as a witness, and having been first duly sworn, testified as follows: 1671

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you state your name, please? A. John R. Cook.

Q. Where do you live? A. 135 Oxford Street, Hartford.

Q. What is your occupation? A. General manager of the Arrow-Hart & Hegeman Electric Company.

1672 *John R. Cook—Direct.*

Q. Also vice-president? A. Yes, sir.

Q. When were you made vice-president? A. The first of 1930.

Q. How long have you been general manager? A. Since the first of 1930, the same time.

Q. As such what are your duties? A. My duties are those of a general manager, in taking over from the president, Mr. Grier, any work that he wants carried through, regardless of whether it is in the manufacturing, sales, or engineering departments. If you want it more in particular,—in the last year

1673 I organized, or attempted to organize, more efficiently his engineering department, to get more enthusiasm and more work out of that department, and by adding to this engineering department imaginative inventors,—if I may use that term—men who do not perfect material necessarily, but can work in their minds and create new working mechanisms.

Q. You might call them artists? A. Yes, more or less a temperamental type, and you have to work with them accordingly.

Q. Did you have anything to do with the sales end of the business? A. Yes, I have taken over

1674 from Mr. Grier the duty of seeing particularly that the non-competitive lines are sold, and that continued pressure is being exerted by the department handling it to increase the business.

Q. Having to do particularly with sales? A. Yes, it had to do particularly with what you might call the sales of the non-competitive devices.

Q. How long did you occupy that position? A. Since the formation of the new respondent.

Q. January, 1929? A. Yes.

Q. And during this period, since January, 1929, you supervised, in your capacity, the activities that

1675

you had in mind of both divisions? A. No, starting in January 1, 1929, Mr. Barry ran the Arrow non-competitive lines, and then, several months after that, he handled the entire so-called heater switch line for both companies. That went on for about six months, and then one division was formed to take over the heater switch line and the non-competitive line, at which time I was manager for several months, and then I was made general manager of the company and Mr. Barry took the management of that business.

Q. And he has now managed that for both divisions? A. Yes.

1676

Q. Prior to January 1, 1929, what were your duties? A. My duties were in the Hart & Hegeman Company. My title was assistant sales manager.

BY MR. BROWN:

Q. That was during the period of the old respondent? A. Yes.

BY MR. HAYCRAFT:

Q. Prior to October, 1929? A. I was assistant sales manager of the Hart & Hegeman Manufacturing Company.

1677

Q. Now, from your experience and from your knowledge that you now have as general manager of the new respondent corporation, can you testify as to the relative volume of competitive and non-competitive business that was being done by the Arrow Electric Company and the Hart & Hegeman Manufacturing Company in 1927? A. In 1927, about fifty-nine per cent. of the Hart & Hegeman business was competitive with that of the Arrow.

1678 *Samuel P. Williams—Direct.*

Q. From the nature of the product that was being sold? A. Yes.

Q. And the system of distribution? A. Yes.

Q. And then, your conclusion is, from the statement you made of the business of these two corporations, that forty-one per cent. of the Hart & Hegeman business was not competitive with the Arrow business in 1927? A. Yes.

(There was a discussion off the record.)

Mr. Gross: No cross examination.

1679 (The witness was excused.)

SAMUEL P. WILLIAMS, recalled as a witness, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Mr. Williams, I believe I asked you, when you testified previously in this proceeding, to produce some figures with respect to the purchase of assets of the Paiste Manufacturing Company by the Arrow

1680 Electric Company, is that correct? A. Yes.

Q. Have you that data at the present time? A. Yes, sir. The books of the Arrow Electric Company showed that it paid to the H. T. Paiste Company $256,414.54 for those assets which it took over, paid for in cash to the H. T. Paiste Company, and that subsequently, by vote of the directors of the H. T. Paiste Company, this revenue was used as a part of the cash dividend declared on the common stock of the H. T. Paiste Company, all of which was owned by the Hart & Hegeman Manufacturing Company.

In regard to the purchase of the assets by the Washington Porcelain Company from the Electric Porcelain and Manufacturing Company, subsidiaries of the Arrow Electric Company and Hart & Hegeman Manufacturing Company, respectively, the books of the Arrow showed that the Arrow bought and paid for in cash to the Electric Porcelain Manufacturing Company $12,843.43 of such assets. This cash so received was used by the Electric Porcelain Manufacturing Company in ordinary liquidation of its accounts.

Q. Which were outstanding? A. Outstanding, yes. 1682

Q. Who negotiated these transactions? A. They were negotiated between Mr. Grier and myself.

Q. Mr. Grier as head of the Arrow Electric Company? A. Yes, and myself as head of the Hart & Hegeman Manufacturing Company.

Mr. Haycraft: That will be all.

(The witness was excused.)

EDWARD R. GRIER, recalled as a witness, having been previously duly sworn, testified further as follows: 1683

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. I believe the last time you were on the stand, Mr. Grier, you were requested by counsel for the Commission to prepare and present a statement showing the savings that had been made and realized by the purchase of certain products by the Arrow Electric Company from the Hart & Hege-

man Manufacturing Company in the manufacture of your various products. Have you done so? A. I have. You will remember that I made a prophesy at that time, and the prophesy as to the economies was fairly good. Of course, it is almost impossible to go into it in detail. There are so many ramifications; economies are made up of so many small items, but there are some outstanding economies which I am very glad to speak of. I will just read what I have here.

Our records indicate that the economy effected in
1685 the year 1928 by taking our manufacture of the Paiste line was considerably in excess of $400,000.

Q. You mean economies? A. Economies to the Arrow. Also to the Hart & Hegeman, because they buy the products for less money, and they make a profit as well.

Q. The $400,000 includes both? A. Yes.

This was due not only to the far greater efficiency of the Arrow manufacture, equipment and methods over the Paiste Company, but also to tremendous savings in overhead caused by handling a big additional volume through the Arrow plant

By transferring the manufacture of porcelain
1686 from the electrical plant of Trenton to the Washington plant of Washington, New Jersey, we increased the volume in the Washington plant over fifty per cent. Normally, this would have resulted in a very great saving, which was not effected due to mismanagement by the then manager of the Washington plant, who was subsequently discharged.

By Mr. Gross:

Q. Whom did you put there in his stead? A. We finally put in the old manager of the Trenton Porcelain Company.

1687

Q. An H. and H. subsidiary? A. An H. and H. subsidiary, and now he is the manager of that company.

BY MR. HAYCRAFT:

Q. About when was he put in there? When did that change take place? A. I can't remember whether it was fifteen months or after—well, I will say about three years ago.

Q. Can you estimate about how much of this $400,000 that you figure you saved through the Paiste deal would go to each company, the Arrow Electric Company and the Hart & Hegeman Company? Have you any idea of that? A. That question is a little hard to answer, for this reason: As I remember it, the Hart & Hegeman did not make any money on the H. T. Paiste Company before October 6, 1927. After we took over the manufacture from them, we put on a discount of ten per cent., but, unfortunately at that time, prices were reduced to a large extent, so the economies which we should have gotten, we did not get, because we did not get the prices for the goods. If the prices had not been reduced this is the amount which we would have made under the old conditions.

1688

Q. In other words, if I understand your answer correctly, what the Hart & Hegeman Company actually realized was a ten per cent. discount which they got on sales they made on products which you made for them—the Arrow? A. Yes.

1689

Mr. Haycraft: That is all.

CROSS EXAMINATION BY MR. GROSS:

Q. But they got better sockets and quicker deliveries and larger stocks? A. Yes, they did. The

1690 Arrow Electric Company was a much more economical manufacturer than the H. T. Paiste Company, a subsidiary of the Hart & Hegeman Manufacturing Company, and the same is true in regard to switches. They were manufactured much more economically than by them.

Q. By "them" you mean Hart & Hegeman? A. Yes.

Q. The resulting efficiency to the Hart & Hegeman was not merely the ten per cent discount, but they got better goods and prompter delivery? A.

1691 Yes.

Q. To supply to their trade? A. Yes.

Q. Resulting in increased sales? A. Yes.

Mr. Haycraft: Mr. Examiner, this concludes the testimony at this time. I will ask for an adjournment to ten o'clock, daylight saving time, at the Old State House on Monday morning.

Examiner Reeves: The hearing will be adjourned to Monday, June 1, 1931, at 10 o'clock daylight saving time, to reconvene in the South room on the second floor of the Old State House

1692 Building in Hartford, Connecticut.

(Whereupon at 12:20 p. m. the hearing in the above entitled matter was adjourned to June 1, 1931, at ten o'clock daylight saving time in the South room, second floor, Old State House Building, Hartford, Connecticut.)

Room 305, United States Court Room, Post Office Building, Hartford, Connecticut. 1693

June 1, 1931.

Met pursuant to adjournment 10:30 a. m. daylight saving time.

Before—WILLIAM C. REEVES, Examiner.

APPEARANCES:

E. H. HAYCRAFT, attorney for the Federal Trade Commission.

1694

CHARLES WELLES GROSS and WALLACE W. BROWN, of Gross, Hyde and Williams, 49 Pearl Street, Hartford, Connecticut, attorneys for the respondent.

(By consent of counsel, the hearing convened in room 305, United States Court Room, Post Office Building, instead of in the Old State House Building.)

1695

PROCEEDINGS:

Examiner Reeves: You may proceed, gentlemen.

Mr. Haycraft: I will recall Mr. Pond.

HARVEY C. POND, recalled as a witness, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. At our last session, Mr. Pond, in your testimony you referred to instances where you believed, or had reason to believe, that the Arrow Electric Company had taken business away from the Hart & Hegeman Manufacturing Company after 1927, or vice versa, and I asked you to check up on that and
1697 bring in whatever instances you could find. Have you done so? A. I have.

Q. What firms have you in mind? A. Doubleday, Hill Electric Company, Pittsburgh.

Q. With respect to that one, which way did that go? A. From H. and H. to Arrow.

Baltimore Electric Supply Company, Baltimore; from H. and H. to Arrow.

Atlantic Electric Company, Norfolk; from H. and H. to Arrow.

Southern Electric Supply Company, Atlanta; from H. and H. to Arrow.

Robertson Supply Company, Incorporated, Or-
1698 lando, Florida; from H. and H. to Arrow.

Turner's Supply, Mobile, Alabama; from H. and H. to Arrow.

Smith-Perry Electric Company, Dallas; from H. and H. to Arrow.

Q. Also, at the last session, in your testimony with respect to the sale of Arrow Heater switches, I asked you to produce the volume of those sales. A. I have those figures beginning in 1924.

In 1924, $22,833.

In 1925, $205,593.

In 1926, $259,055.

In 1927, $251,559.

In 1928, $313,702, and for that year we have a break down, so that excluding export and Canada, the domestic sales amount to $171,409.

In 1929 the total business, $361,023, which, less export and Canada, makes the domestic sales $212,-612.

In 1930, total sales, $109,619; less export and Canada, making domestic sales $213,430.

Mr. Haycraft: I think that is all.

Mr. Gross: No questions.

Mr. Haycraft: At this time I wish also to 1700
offer in evidence the list of common stockholders of the Arrow-Hart & Hegeman Electric Company as of January 1, 1929, at the time it was organized, which is introduced by counsel for respondent as having been prepared at their order at my request by the Phoenix State Bank and Trust Company, the transfer agent. I offer it in evidence at this time.

Examiner Reeves: This list is received in evidence as Commission's Exhibit Number 96.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 96.") 1701

Mr. Gross: Counsel for respondent, at the request of counsel for the government, admits that the preferred stock of the new respondent, in accordance with the agreement of merger, Exhibit Number 51, was issued, share for share, to the preferred stockholders of the Arrow Electric Company and of the Hart & Hegeman Manufacturing Company, respectively, as shown on Exhibits 70 and 71, respectively, being lists of those preferred stockholders at the close of business of December 31, 1928.

1702 *John J. Keane—Direct.*

JOHN J. KEANE, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. You will state your name, your residence, and your occupation? A. John J. Keane, 68 Read Street, Agawam, Massachusetts.

Q. What is your occupation? A. Manager of Charles E. Hayes Company.

1703 Q. Where is that business located? A. 189 Taylor Street, Springfield, Massachusetts.

Q. In what business is the Charles E. Hayes Company engaged? A. Wholesale distribution of electrical supplies.

Q. Does it travel salesmen? A. Yes.

Q. Over what territory does it travel salesmen? A. About fifty-mile radius. Do you want the cities and towns?

Q. The larger ones. A. Springfield, Northampton, Greenfield, Pittsfield, Westfield, and Holyoke.

Q. What class of trade do they call on? A. Industrial—that is, factories, electrical contractors, dealers, hardware stores, and things like that.

1704 Q. How many salesmen do you travel? A. Three.

Q. Do you have any business dealings with the Hart & Hegeman Manufacturing Company? A. As the Hart & Hegeman, do you mean?

Q. Yes. A. Yes, sir, we buy practically all their what we call schedule material from them.

Q. At the present time? A. Yes.

Q. How long have you had dealings with the Hart & Hegeman Manufacturing Company? A. I should say about ten or twelve years, possibly longer.

1705

Q. And during that period of time have you bought all your schedule material, as you call it, from them? A. No, but almost all of it.

Q. Has the percentage of your requirements of that type of material varied during that period of time? A. Oh, yes, sometimes it will run seventy per cent; sometimes as high as eighty per cent.

Q. I show you Commission's Exhibit 10 and ask you if you recognize that as a description of the various articles of wiring devices that you buy from the Hart & Hegeman Manufacturing Company? A. Yes, sir.

1706

Q. During that period of time did you have any dealings with the Arrow Electric Company? A. Yes, sir, sometimes as high as thirty per cent., twenty or thirty per cent.

By Mr Gross:

Q. During what period of time, do you mean?

Mr. Haycraft: The period of time that he has been in business.

By Mr. Haycraft:

1707

Q. How did the Hart & Hegeman Manufacturing Company solicit your business? A. The district sales manager and salesmen.

Q. Say, back in 1925, 26, and 27, can you remember who called on you at that time representing the Hart & Hegeman Manufacturing Company? A. Yes, I think at that time it was in charge of the representative in Boston. He was Mr. Albet Mann. I am pretty sure that was the name, that he was at the head of it at that time.

1708 *John J. Keane—Direct.*

Q. Did Mr. Mann call on you personally? A. Yes, Mr. Mann and Mr. Ross, who used to be with Mr. Mann. 1927, you say?

Q. Yes, sir. A. I am not sure that Ross was with him at that time.

Q. Do you remember when Albet Mann discontinued calling on you and somebody else did? A. Yes, sir, when the Hart & Hegeman opened a Boston office.

Q. Do you know when that was? A. I should say it was around—possibly around 1927. I am not sure.

1709

Q. Then, who called on you representing the Hart & Hegeman Manufacturing Company? A. Mr. Saladine.

Q. Did salesmen also of the Hart & Hegeman? A. Yes.

Q. Do you remember who the salesmen were? A. There were three different salesmen—Kayser and Watts. Of course, Mr. Smith called on me quite frequently from the factory.

Q. From the factory? A. Yes, on specialties and things like that.

Q. Does Mr. Saladine still call on you? A. No, not since the first of the year.

1710

Q. Who calls on you now representing the Hart & Hegeman Manufacturing Company? A. Mr. Nelson.

Q. Do you remember his initials? A. A. G. I think.

Q. Do you know what Mr. Nelson was before he became district manager? A. Manager of the Arrow Electric Company.

Q. Back in 1925, 26 and 27 who represented the Arrow Electric Company in calling on you? A. Mr. Nelson.

1711

Q. And all during that time? A. Yes.

Q. Did he have any salesmen besides himself? A. Yes, he had—The best that I can say—He had some salesmen, but I can't tell you just now.

Q. Does he have any salesmen calling on you now? A. Sikes and himself.

Q. How long has Sikes been calling on you? A. Oh, I should say about a year.

Q. And does he solicit business for the Arrow Electric Company? A. He solicits business for both companies.

Q. And how long has he been soliciting business for both companies? A. As near as I can understand, since the first of January of this year.

1712

Q. 1931? A. 1931.

Q. How did the line of products of the Arrow Electric Company sold in 1925, 1926 and 1927 compare with that of the Hart & Hegeman as to general characteristics? A. Practically the same.

Q. This schedule (handing paper to witness) would correctly describe them? A. Yes.

Q. About 1926 and 1927 what percentage of your purchases of all electrical wiring devices were from the Hart & Hegeman Manufacturing Company and what percentage from the Arrow Electric Company?

1713

Mr. Gross: Just a moment. Will you read that question, please?

(The last question was read.)

A. Between seventy and eighty per cent. H. & H., and the balance, with a possible exception of ten per cent., from Arrow. The ten per cent. I bought from other companies.

1714 *John J. Keane—Direct.*

Q. In 1928, how did that percentage run? A. In 1928, I should say, about the same.

Q. In 1929? A. Well, I think in 1929 we decided to carry but one line, that is, as far as it was possible. I think that would be the latter part of 1929.

Q. And 1930? A. We followed that out, and carried mostly H. & H.

Q. Why did you come to that decision? A. Well, because we were duplicating our stocks. We had three or four different makes on our shelves, and we
1715 could see no reason why we should carry these competing lines. We figured the H. & H. line was the better; that is, always had the better name, in our estimation, and we always had carried it.

Q. So from that time you carried a smaller percentage of Arrow products? A. Yes, very small.

Q. Did you meet or come in contact with any salesmen of Hart & Hegeman or the Arrow companies in your own calls upon the trade? A. Oh, yes, surely. I met them both; that is, up to the first of January I met both salesmen. In fact, we let them go around with our salesmen.

Q. Just explain how that operates, how a sales-
1716 man goes around with your salesman? A. Well, he comes in with new items, and he wants to go out among the trade and display them. We leave one of our salesmen go with him and call on the trade. If he is a representative of the Hart & Hegeman line he is trying to sell the Hart & Hegeman products.

Q. How are the orders placed? A. They are placed whichever the dealer wants to place them; that is, if he wants H. & H. or Arrow—some insist on Arrow and some insist on H. & H.

1717

Q. Orders are placed as they desire? A. Yes, they are.

Q. Prior to this year, January, 1931, both salesmen; that is, salesmen of both the Arrow and Hart & Hegeman, went around with your salesmen? A. Yes, or independently of our salesmen. That is, the H. & H. salesmen, but not the Arrow—probably once or twice the Arrow.

Q. What is the situation after January, 1931? A. Well, they have one representative in our territory now; that is, as far as I know, and he sells both lines.

1718

Q. How does he do that in making these calls on the trade? A. Well, if he happens to be with me he sells H. & H., because I insist on it. If he goes with some other distributor, he sells the—

Q. Is there an Arrow distributor in this territory? A. Yes.

Q. What is his name? A. The Hampden Electric Supply Company.

Q. And have you seen him around with the salesmen of the Hampden Electric Supply Company? A. No, I never happen to come across him, no.

1719

Q. Have you ever seen him in the trade in calling on the retail trade when he was not representing that firm? A. Oh, yes; I have seen him when he was free-lancing.

Q. Was there any explanation given to you as to why the Arrow salesman was taken away from that territory and is handled now by the H. & H. salesman? A. The H. & H. salesman was taken away. The Arrow salesman is there now, since the first of January, this year.

Q. Yes, just change that around if I have it twisted. A. The only explanation I got was that the man that covers the Connecticut territory was the

1720

fellow who used to come into Springfield—possibly the only part he used to cover, and he had so much territory that he could not come up there.

Q. That is the H. & H. man? A. Yes.

Q. Who told you that? A. Mr. Nelson, the district sales manager.

Q. What did he say? Did he say that Mr. Sikes would do it from that time on? A. Well, he told me he would represent both lines; when he was with our man he would be representing H. and H., and when he was with anybody else, I presume, the other com-

1721

pany, but I understand that he has sold for us both lines to a customer, H. & H., and Arrow.

Q. Have you seen in your territory any items having the trade mark "Arrow-H. and H."? A. Yes, several items.

Q. Can you describe some of those? A. There is a radio receptacle, I think. I think there is an attachment plug cap.

Q. Have you seen any switches? A. No, I have not seen any switches.

Q. When did they first come out? A. I don't know. I just happened to come across them.

Q. How long ago was it? A. About two or three

1722

weeks ago.

Mr. Hayeraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. Mr Keane, this Hampden Electric Supply Company, which, I understand, is the Arrow distributor in Springfield, do they sell the same general complete line of electrical wiring devices as you do? A. As far as I know, yes, sir.

1723

Q. They are competing with you, then, for the sale of goods that they own to the trade? A. Yes.

Q. And is that competition between you and Hampden as keen as it ever was?

Mr. Haycraft: That is objected to as not proper cross examination.

Mr. Gross: I submit, if your Honor please, that we do not confine it to what my brother brought out. Let us have the whole question of competition. He just brought out that Hampden was the Arrow distributor in Springfield.

1724

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

(The last question was read.)

A. Yes, sir, it is keener, because they put several more salesmen in, as I understand.

Q. And you have gradually brought your line to the H. & H. goods, because you like that one line and you want to carry one stock? A. Yes.

Q. No one ever refused to sell you the Arrow line? A. I still buy Arrow. I am still a distributor of Arrow, and of two other competing lines.

1725

Q. What other lines? A. Pass and Seymour and Hubbell.

Mr. Gross: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. What percentage of business has Pass and Seymour of your business? A. About ten per cent.

Q. About the same as Arrow, then? A. The Arrow line is a little bigger than that. The Arrow

probably runs fifteen to twenty per cent., but the only reason I carry any of these is because there is a certain demand for them.

Q. Is there any other distributor of Pass and Seymour and Hubbell in your territory? A. I couldn't tell—yes, Hubbell. I know Wetmore Savage does. I think General Electric Supplies distributes it also. I don't know whether Hampden does or not.

Mr. Haycraft: That is all.

1727 Examiner Reeves: We will take a short recess.

(Whereupon a short recess was taken.)

JOHN M. DALTON, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you give your full name? A. John M. Dalton.

1728 Q. Where do you live? A. 93 Cheerylyn Avenue, Springfield.

Q. What is your occupation? A. Clerk.

Q. For whom? A. Hampden Electric Supply Company.

Q. Where is your place of business? A. 216 Dwight Street, Springfield.

Q. How long have you worked for the Hampden Electric Supply Company? A. They have been in business for about five years under the name of Hampden. Before that it was Brown and Ross, Incorporated.

1729

Q. How long have you worked for this same house? A. In the same place of business, under different names, probably eight years.

Q. What line of products do you handle? A. You mean in wiring devices? A. Yes.

Q. Yes. A. Mostly Arrow.

Q. I show you Commission's Exhibit 40 and ask you if that correctly describes the general line that you buy from Arrow Electric Company? A. Yes.

Q. Have you had any business dealings at all with the Hart & Hegeman Manufacturing Company? A. Very little, until recently. I just bought that switch, that was all, the one I explained to you about.

1730

Q. Of course, your explanation to me is not in the record. A. I buy everything from the Arrow Electric Company, with the exception of that one switch, which I got.

Q. Back in 1926 and 1927 who solicited your business for the Arrow Electric Company? A. Mr. A. C. Nelson, and Mr. Schwollow.

Q. That is his salesman? A. Yes.

Q. What was Mr. Nelson's position, do you know? A. Manager of the Boston District, as far as I know.

1731

Q. He solicited the business personally? A. Yes.

Q. And did his salesmen go with your salesmen to make calls on the trade that you sold to? A. Yes, we only had one salesman, Mr. Wilson, and most of the time he went out alone.

Q. What class of trade did you sell to? A. Contractors, industrials, mostly.

Q. Has there been any change in the method of distribution or solicitation by Mr. Nelson in the past few years or not? A. All he sold is Arrow; that is all he sold.

1732 Q. Who is the representative that calls on you now? A. Mr. Sikes.

Q. But Mr. Nelson also calls on you? A. Yes.

Q. Does Sikes go around with your salesmen in calling on your customers? A. Yes, sir.

Q. What line does he sell? A. The Arrow line, I hope.

Q. Very recently has he displayed what is known as the Arrow-Hart & Hegeman line? A. Outside of the sample board—

Q. What is the sample board? A. It contained
1733 a radio receptacle, two pilot lights, and—well, I don't know what else. There were six of them.

Q. Did he take that sample board with him in his calls on the trade in the past month? A. Yes.

Q. Did you secure any business of that new line? A. Yes.

Q. Since you have been in business there with the Hampden Electric Supply Company and its predecessor, Brown and Ross, has any representative of the Hart & Hegeman Manufacturing Company solicited your business? A. No, sir.

Q. You are not acquainted with any salesmen of that firm? A. No, sir, I don't know one of them.

1734 Q. That is true within the past two or three years, as well as some years ago? A. I believe a fellow may have come in to Mr. Wilson, but we always tell him that we handle nothing but Arrow—in fact, we are almost one hundred per cent Arrow. A few items we go away from, but we use as much Arrow as we can.

Q. Do you know anything about the quality of the Arrow products as compared with the H. and H. products? A. No.

1735

Q. You have never seen the two lines together? A. No.

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. This sample board, that was marked with the name "Arrow-Hart & Hegeman Electric Company?" A. That is on the top.

Q. How were the particular devices on that sample board marked? A. You mean the makes?

Q. Yes. A. Just the numbers on them. 1736

Q. Was there any trade mark on them? You don't mean the joint name was on the articles, do you? A. No, sir, on the top of the board.

Q. So far as you know there may have been H. and H. articles with the H. and H. trade mark and Arrow devices with the Arrow trade mark? A. There might have been anything. I never looked at it.

Q. Who are your principal competitors in Springfield? A. Charles E. Hayes Company.

Q. Represented by Mr. Keane, who has testified? A. Yes.

Q. That is in the wiring device line? A. Yes. 1737

Q. Are you in active competition with them?

Mr. Haycraft: That is objected to for the same reason that I gave a moment ago. My direct examination did not deal with that.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

Mr. Gross: Will you read the question, please?

(The last question was read.)

A. Yes.

Q. And have been for years? A. Yes, sir.

Q. And that is true in 1927 and 1928 as it was prior to that time, isn't it? A. Always been so.

Q. There has been no let down in that competition? A. No.

Q. And the two firms fight for all the business in Springfield? A. Yes, we fight for it and we get the most of it.

Q. As I understood you, this change in Mr. Nelson's calling on you as representing the two divisions and Mr. Sikes as one salesman in and around Springfield, that did not go back of the first of this year, approximately? A. You mean Mr. Sikes—

Q. I think you testified it was about the first of the year that Mr. Nelson came to you and represented both divisions.

Mr. Haycraft: No, this witness did not testify to that.

Q. Can you locate when Mr. Nelson— He never did anything? A. No, sir, just went the same. When the salesmen came in we bought the Arrow line.

Q. Mr. Nelson had always been the Arrow man? A. Yes, sir.

Q. And he came as an Arrow man? A. Yes.

Q. Mr. Sikes came to you as an Arrow man? A. Yes.

1741

Q. The fact that you dealt almost exclusively in Arrow goods was entirely a matter of decision in your own house, wasn't it? A. Yes, sir.

Q. You were not compelled to deal in that exclusively? A. No, we did it in all the lines; we go one hundred per cent. one company.

Q. You deliberately picked Arrow? A. It was picked for us. When Brown and Ross had it, it was Arrow, and when Wilson took over the business he continued to be Arrow.

Q. How about Pass and Seymour? A. We have to pick up what the Arrow does not make.

1742

Q. You tell all your salesmen you take the Arrow when you can? A. Yes.

Mr. Gross: That is all.

Mr. Haycraft: That is all.

(A short recess was taken.)

D. M. SHEPARD, was thereupon called as a witness, and having been first duly sworn, testified as follows:

1743

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you give your full name, please? A. D. M. Shepard.

Q. Where do you live? A. New Britain, Connecticut.

Q. What is your occupation? A. Sort of general, all-round man, Landers, Frary, and Clark, New Britain.

Q. Where is their business located? A. New Britain.

1744 Q. In what business is Landers, Frary, and Clark engaged? A. Among other things, they make electrical appliances, cutlery, fruit choppers, bread mixers, vacuum cleaners, brass goods, coffee mills—

Q. That is enough. A. Silverware.

Q. Do you make a line of electrical ranges? A. Yes, sir.

Q. Have you had occasion to make any purchases from the Arrow Electric Company for any of your equipment? A. May I ask you to qualify that? In other words, the Arrow Electric as now?

1745 Q. Well, at any time?

Mr. Gross: He wants to know which company.

Mr. Haycraft: He said the Arrow Electric Company.

Mr. Gross: He said "now".

Q. Well, say, four, five, or six years ago. A. We purchased quite a lot of material from the Arrow Electric Company. Incidentally, I might add right here that I was purchasing agent up to three years ago.

1746 Q. For how long a period of time were you purchasing agent? A. For about eight years.

Q. What items did you buy from the Arrow Electric Company, say, back in 1926 and 1927? A. We started purchasing what may be called switches for electric ranges, from the Arrow Electric Company.

Q. Known as heater switches? A. Heater switches: heavy duty. They are a type of heater switches.

Q. Did you continue to buy subsequent to that time from the same place? A. Yes, they came to

1747

us from the same source of supply, but a different name.

Q. Did you understand that there was a change in the ownership of the company since that time? A. The billings, and so forth, have come to us with "Arrow-Hart & Hegeman Electric Company."

Q. Arrow Electric Company division—is that the way it comes now? A. I can't say as to that. I have been out of touch with the purchasing department three years.

Q. But you are still handling heater switches that come to you from that same source? A. Yes, sir.

1748

Q. Will you say that your purchase of heater switches from that same source was substantial during that period of time?

Mr. Gross: What period of time?

Mr. Haycraft: 1925 and 1926, up to the present time.

Mr. Gross: The gentleman stated that he had nothing to do with it since three years ago.

Mr. Haycraft: I think you misunderstood him. While he is not the purchasing agent, he has something to do with that.

1749

A. In a general way for the purchasing department. When you come to the names—whether they have "incorporated" on it or not, I am not quite so clear. In a general way, our purchases from the Arrow—the Arrow-Hart & Hegeman—have been more substantial since we have been using these switches.

Q. Did you buy all your heater switches for your electric ranges that you manufacture from that source? A. Not entirely.

1750 Q. Would you say the great majority or do you buy more from somebody else? A. The great majority.

Q. Do you have any objection to estimating approximately the value of the annual purchases of heater switches, if you know? A. In an average year, sixty to seventy-five thousand dollars' worth a year.

Mr. Hayeraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

1751 Q. All these purchases from the Arrow Electric Company, or the Arrow-Hart & Hegeman Electric Company, were on direct order from your company to the factory? A. Yes.

Q. And on special specifications, generally? A. In general, yes.

Q. You also bought a line of special appliances from Hart & Hegeman, didn't you? A. We had purchased from Hart & Hegeman for a great many years, among other items, a trigger switch that we used with our vacuum cleaner.

Q. Of special design? A. It was specially designed for the vacuum cleaner trade, used by others
1752 in the trade.

Q. But made specially for you on special order? A. Yes.

Q. Any special goods at all? A. No, sir.

Q. Those you bought from the Hart & Hegeman Manufacturing Company before they went into the Hart & Hegeman Electric Company? A. Yes.

Q. And you still continue to do it? A. Yes.

Q. So you are buying from both divisions special goods on special order and special design, and not shelf goods in either case? A. No.

BY MR. HAYCRAFT:

Q. Are you sure that that heater switch was not a shelf goods item? A. When you refer to shelf goods, I assume that you are referring to an article that is so regular—

Q. That could be used by other customers?

Mr. Gross: I don't quite agree with that definition. Maybe the witness would like to know what you mean by that.

Mr. Haycraft: Would you like to give your definition? 1754

Mr. Gross: May I give it? What I meant was, shelf goods to the witness was: I meant something standardized, of mass production, carried in stock for delivery on immediate receipt of order, and yet made up from special design, but not exclusively for Landers; it might be made up for Hoover or anybody else.

Mr. Haycraft: My question was whether or not the heater switch that they bought from the Arrow Electric Company was a standard switch which was manufactured by the Arrow in mass production and sold to other manufacturers; was catalogued and carried in stock 1755 —whether he knows that.

The Witness: To the best of my knowledge it was not a shelf item.

Q. Will you describe it as best you can? A. Do you want the present or the one—

Q. Let us start with the one that you started with. A. That goes back to the early days of the range switch business.

1756 Q. 1926 and 1927? A. Well, even—the switch industry did not advance very far, and it was necessary to have a large procelain block, as I recall it, through which your wires were brought, and then a switch set on that block—it was a three-way—that is, it was capable of giving three separate stations—different heats; a reciprocating switch especially designed for the range manufacturer as regards durability. In other words, there were plenty of other reciprocating switches on the market, but they would not stand up.

1757 Q. What amperage was required and what voltage? A. Thirty and 60 amperes, as I recall it.

Q. 250 volts? A. As high as 250 volts.

Q. Did the Arrow Electric Company catalog contain that switch at that time? A. Whether or not it was at that time or not, I am not sure, but at one time they had what might be termed a specialty catalogue, a small leaflet. To the best of my knowledge it never showed in their wiring-device catalogue.

Q. But they put it out in a specialty catalogue? A. It may be called a catalog, or it may be called a bulletin.

1758 By Mr. Gross:

Q. As I understand it, whatever it may have started with, you quickly got away into special requirements, which were specially made, from special design? A. As the industry advanced, the obsolete numbers were done away with.

Q. And we got away from anything like a standardized line a number of years ago? A. Well, even the original was a specialty.

Mr. Gross: All right, that is all.

Examiner Reeves: Anything further?

1759

By Mr. Haycraft:

Q. What difference is there now between the original switch and the one you are using now? What are the differences now? A. The switch at the present time has no fuse block. The principal difference has been in the improvement of the interior mechanism, so they will stand a great deal more revolutions than the old type of switch; special length of stems, and when I refer to the stem, that is part of the switch on which the knob revolves. In some cases there are specially designed knobs.

1760

Q. Did anyone from the Arrow Company solicit your business, or did you seek them to make the switch for you? A. Our business was solicited by the Arrow Electric Company.

Q. Did you make a series of tests to determine which one you would select? A. The Arrow Electric switch was carefully tested out before we switched our business to the Arrow.

Q. Did you make a test of all other makes? A. Two other prominent switches were tested at the same time.

Q. And you selected the Arrow over the other two? A. Yes.

1761

Mr. Haycraft: That is all.

By Mr. Gross:

Q. And the mechanisms of the other manufacturers were different from ours? A. Yes, sir.

By Mr. Haycraft:

Q. Were they intended to serve the same purposes? A. Yes.

1762

Q. But you felt the mechanism of the Arrow was better? A. Yes, sir.

Q. As a matter of fact, you had been using another manufacturer's product before that time, had you not? A. Yes.

Q. And you wanted to improve it? A. Yes.

By Mr. Gross:

Q. And came to us and asked us if we could not give you a better switch? A. As I recall the transaction, Mr. Perkins came to us on that switch.

1763

By Mr. Haycraft:

Q. He told you he had a better switch than the one you were using, or just what was the approach? A. As to whether or not we were entirely satisfied with the first results we were obtaining from the heater switches as they were developed in that day, and my answer was promptly, "No," and the Arrow Electric Company set out to develop the heater switch which we eventually adopted.

Mr. Haycraft: That is all.

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Mr. Gross: That is all. Thank you.

(A short recess was taken.)

1765

MISS E. M. EVANS, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. What is your occupation? A. Transfer clerk at the Phoenix State Bank and Trust Company.

Q. As such, did you have anything to do with the transfer of stock of Arrow-Hart & Hegeman, Incorporated, during the time that it was in existence, from October, 1927, until January, 1929? A. I did.

1766

Q. I will ask you if you can identify this paper which I hand you now? A. Yes.

Q. I also show you "Commission's Exhibit Number 50," which was issued by the Phoenix State Bank and Trust Company, as transfer agent, for Arrow-Hart & Hegeman, Incorporated, and of the Arrow Electric Company and of the H. and H. Electric Company, which refers to the necessity of stockholders of Arrow-Hart & Hegeman, Incorporated, to present their certificates for shares to the Phoenix State Bank and Trust Company to be stamped showing an assent to the plan of reorganization, which was then being promulgated, and my question is whether or not this stamp which you now have before you was the stamp that you were to use in stamping the stock that might be presented under that plan? A. Yes.

1767

Q. The next question is whether or not it was ever used? A. It was not.

Q. Can you state why? A. The certificates of stock that we had prepared were never taken up by the stockholders. They were never asked for.

1768

Q. Is that a part of the plan that was never—
A. No. They were all prepared and awaited the call of the stockholders, but nobody ever asked for them. We had no occasion to use the stamp.

Mr. Haycraft: With that explanation, I offer the stamp in evidence, with the testimony of this witness, which will explain that particular feature of the transaction.

Examiner Reeves: This stamped paper is received in evidence as "Commission's Exhibit Number 97."

1769

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 97.")

Q. As I understand it, the stamp which you have just identified, was to be placed upon the certificates representing the capital stock of Arrow-Hart & Hegeman, Incorporated. Now, I show you "Commission's Exhibit Number 66," which also is a stamp. A. Yes.

Q. Did you have anything to do with that stamp? A. Yes.

1770

Q. And on what stock or certificates was that stamp put on? A. That was placed on the Arrow-Hart & Hegeman, Incorporated, certificates of stock.

Q. And also the other? A. No.

Q. Just on that stock? A. Yes.

Q. That was done with that particular stamp that you have before you, Exhibit 66? A. Yes.

By Mr. Gross:

Q. Do you know when that was put on? A. After January 1, 1929.

BY MR. HAYCRAFT:

Q. What were the circumstances of the use of that stamp? A. We would put it on the certificates, showing that they were of no value, and returned the certificates to the stockholders.

Q. They were just stamped and returned to the stockholders of Arrow-Hart & Hegeman, Incorporated? A. Yes.

Q. And at the same time that that was done, would you issue stock in the Arrow Electric Company and the H. and H. Manufacturing Company? 1772
A. In the Arrow-Hart & Hegeman Electric Company.

Q. You would issue stocks to those people? A. As they would bring in their certificates we would give them a new certificate of like number of shares of the Arrow-Hart & Hegeman Electric Company.

(A short recess was taken.)

EDWARD R. GRIER, recalled as a witness, having been previously duly sworn, testified further as follows: 1773

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Do you identify this paper as a proxy which was given to you by the stockholders of the Arrow Electric Company?

Mr. Gross: Of the common stock.

Q. The common stockholders of the Arrow Electric Company in July, 1927? A. Yes, July, 1927. I do.

1774

Mr. Haycraft: I offer in evidence a copy of this exhibit at this time, and ask that it be marked "Commission's Exhibit Number 98."

Examiner Reeves: This document, identified by the witness, is received in evidence as "Commission's Exhibit Number 98," with leave granted to withdraw the original and substitute a copy.

(The paper referred to was thereupon received in evidence and marked "Commission's Exhibit Number 98.")

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Mr. Haycraft: Mr. Examiner, this concludes the taking of testimony in Hartford of this case, and I ask that an adjournment be had until 10:30 o'clock eastern standard time, or eleven o'clock daylight saving time, in Room 229, Young's Hotel, Boston, Massachusetts, on June 3.

Examiner Reeves: The hearing will be adjourned to June 3, 1931, at 11:30 a. m. daylight saving time, to reconvene in Room 229 of the old Young's Hotel Building, Boston, Massachusetts.

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(Whereupon, at 12:30 p. m., June 1, 1931, the hearing in the above-entitled matter was adjourned to June 3, 1931, at 11:30 a. m. daylight saving time at Room 229 of old Young's Hotel, Boston, Massachusetts.)

Room 229, Old Young's Hotel Building, 1777
Boston, Massachusetts.

June 3, 1931.

Met pursuant to adjournment, 11.30 a. m., daylight saving time.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

E. H. HAYCRAFT, Attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. 1778
BROWN, of GROSS, HYDE, AND WILLIAM, 49 Pearl Street, Hartford, Connecticut, Attorneys for the respondent.

PROCEEDINGS.

Examiner Reeves: You may proceed, gentlemen.

Mr. Haycraft: Before I proceed further with the witnesses I have here in Boston, I would like to offer this in evidence, to be considered 1779
in connection with Mr. Pond's testimony given the day before yesterday, and which I understand he had prepared pursuant to his instructions at my request. I offer it in evidence at this time so that it may take its place in order.

Examiner Reeves: The paper will be received in evidence, marked Commission's Exhibit No. 99.

(The document was thereupon received in evidence and marked "Commission's Exhibit No. 99.")

1780 *P. J. Rossiter—Direct.*

Mr. Haycraft: I have here the paper which was marked Exhibit 98. This is to be substituted for the copy that was marked Commission's Exhibit 98 the other day at Hartford.

P. J. ROSSITER, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

1781 Q. Will you state your name. A. P. J. Rossjter.

Q. What is your address? A. Manchester, N. H.

Q. What is your occupation? A. Electrical wholesale business.

Q. Do you work for yourself or are you employed by a corporation? A. A partnership.

Q. A partnership? A. Yes.

Q. And with whom are you in partnership? A. J. W. Rendall.

Q. What is the name under which you do business? A. The Granite State Electric Supply Co.

Q. And you do business in Manchester? A. Yes, Manchester, N. H.

1782 Q. What territory do you include in your sales efforts? A. Practically the entire State of New Hampshire and the bordering towns on the border of Massachusetts and the border of Maine.

Q. Do you travel salesmen? A. Yes.

Q. How many salesmen do you travel? A. One.

Q. Do you and your partner solicit business also? A. Yes.

Q. And what particular products do you handle? A. Supplies such as are used by electrical contractors—sockets, wire, cable, fixtures.

Q. And that includes what is known as electrical wiring devices? A. Yes.

Q. How long have you been in that business? A. Since 1923.

Q. During that period of time, that is, since 1923, have you had any business dealings with the Arrow Electric Co.? A. Yes.

Q. When did you first buy from them? A. 1925 or 1926, I should say, about. That is my information on that.

Q. I show you Commission's Exhibit 72, which is catalogue 21 of that company, and ask if you rec- 1784
ognize that? A. I do.

Q. And did you purchase the full line of devices as advertised in that catalogue or just certain items? A. Certain items, but we were in the position to obtain any we did want.

Q. What were the principal items that you bought from them? A. Sockets and switches would be the principal groups.

Q. About 1927, did you handle any other line of electrical wiring devices than the Arrow line? A. No, nothing in the line that Arrow made.

Q. What other lines of wiring devices did you buy? A. In 1927?
1785

Q. Yes. A. In volume of business, none. There were some switches—Levolier switches that we buy. Is that what you are trying to get at?

Q. Did you buy any from General Electric, Hubbell, and Hart & Hegeman? A. Except what we could not obtain from Arrow, because we were charged more.

Q. And you continued to handle the Arrow line in the same manner since that time? A. Until about December of the past year. At that time we

were made Bryant distributors, which is a similar line to Arrow.

Q. And why did you change over to Bryant? A. We felt that we had a competitor who was selling the same items that we were selling.

Q. Who is that? A. The Varick Co.

Q. Was the Varick Co. handling the Arrow line? A. No.

Q. What line was it handling? A. Hart & Hegeman.

Q. How long had they been handling the Hart &
1787 Hegeman line? A. I should say three years.

Q. About that time? A. About that time.

Q. When did you come to the conclusion that it was the same line as yours? A. About the consolidation for the bringing together of the Arrow and the Hart & Hegeman Co.

Q. When was that brought to your attention? A. Most a year ago; about a year ago.

Q. How did you learn that? A. The first notice I had—I suppose first it was a rumor, and then we heard about it, and then, afterwards, the Arrow and Hart & Hegeman letters would bear the title "Arrow-Hart & Hegeman Electric Co."

1788 Q. Back in 1923, who called upon you representing Arrow? A. Mr. Nelson.

Q. He continued to call since that time? A. Yes.

Q. Did any other saleseman representing that firm, besides Mr. Nelson, call on you? A. Yes, Mr. Nelson had some junior salesmen, one by the name of Mr. Peck, and Mr. Sykes. That is all I know.

Q. How did they come in contact with you? What did they do? A. They simply called on us to see if everything was all right and to see if they could help us. They tried to help us by calling on factories and contractors whom we were not selling.

Q. That is, they would call on them as missionary salesmen? A. Yes.

Q. And show them their line? A. Yes.

Q. Did they do that for you? A. Yes.

Q. They were quite active in soliciting business for you? A. No.

Q. Never had been active? A. No.

Q. During the past year, have they continued to make you offers of service of that kind? A. Continued to call, and if we had called on them for any service they would have given it to us.

Q. Did you discuss with Mr. Nelson the matter 1790
of selling their product through the Varick Co.? A. No, I did not. My partner did.

Q. During the period since 1927, has any salesman or representative of the Hart & Hegeman Manufacturing Co. solicited business from you? A. Solicited from us since 1927?

Q. Yes. A. No.

Q. Are you acquainted with the Hart & Hegeman line of articles? A. Yes.

Q. Are they the same as the Arrow line—or were they in 1927 up to, say, 1929, the same as the Arrow line? A. The Hart & Hegeman line was not as complete, as I recall it, from scanning the cata- 1791
logue, Hart & Hegeman had specialties which they made which I do not believe Arrow had, and Arrow had specialities which I do not believe Hart & Hegeman had.

Q. It would be both ways? A. Yes.

Q. How would you compare the quality of the two items? A. To the best of my knowledge, it would be about equal.

Q. Had you built up a rather substantial business in the Arrow line at the time that you changed over to Bryant? A. Yes, we thought so.

1792 *P. J. Rossiter—Direct.*

Q. What was the objection on your part to the distribution by the Varick Co. of the Hart & Hegeman line? A. We always made it a policy to keep individual lines of our own, and at the time of consolidation of the two companies, or since consolidation, it is now Arrow—he has practically the same items that Hart & Hegeman has.

Q. If he has Hart & Hegeman, he has the same as Arrow? A. Yes.

Q. In the sale of your Arrow line, had you noticed whether you always received Arrow products
1793 which were in Arrow containers, or did you find other containers? A. We found labels that were printed or pasted on original Hart & Hegeman containers, over which we found an Arrow label.

Q. In other words, your Arrow customers would receive an item in Hart & Hegeman containers with an Arrow label on top.

Mr. Gross: I object to that. He does not mean that.

Mr. Haycraft: Let us see.

Mr. Gross: Do not lead the witness. You have been leading him right along.

1794 Mr. Haycraft: I am just trying to summarize that statement that he made.

The Witness: Do you want me to state it again?

Mr. Haycraft: Yes.

The Witness: I contend that they had taken boxes or cartons, and we found pasted outside a Hart & Hegeman, label, and an Arrow label on top of that. I don't say that the item was not made by the Arrow; neither do I say that it was. It was made by the same company, to the best of my knowledge.

1795

Q. It was an Arrow item in the box? A. I don't know what the item was in the box, but the outside box would have a label on it, and that was an objection with us, because we did not want a customer of ours, to whom we sold the Arrow item, to have this label fall off or work off, and have him find that he was getting Hart & Hegeman.

Q. What other distributors of electric wiring devices are located in the State of New Hampshire? What other wholesale distributors are located there? A. J. J. Moreau, I understand, is a distributor.

1796

Q. Where are they located? A. In Manchester.

Q. Do you know what line they handle? A. Comparable lines to Arrow?

Q. Yes. A. Weber.

Q. At the present time, do you receive any orders from your customers, calling for Arrow products? A. We receive orders with Arrow numbers from our customers.

Q. How do you obtain your supply of Arrow products? A. The same manner as we did.

Q. You give that order to Mr. Nelson? A. Or send them to the factory.

Q. You give them to Mr. Nelson or send them to the factory? A. Yes.

1797

Q. Do you ever get any orders for Hart & Hegeman articles? A. We have had orders for them.

Q. How long ago? A. We get them now.

Q. How do you obtain your supply of Hart & Hegeman products? A. Now, if we want any Hart & Hegeman items, we would give the order to Arrow and specify the Hart & Hegeman number and initial.

Q. And that has been true since when? A. Since the consolidation.

1798 *P. J. Rossiter—Cross.*

Q. You figure that, so far as you know, is about a year ago? A. Yes, to the best of my knowledge.

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. This question of this container or box with an Arrow label pasted over an H. & H. label. The article inside that box was branded Arrow, wasn't it? A. I don't know what was inside the box. I never looked inside the box. I know the two labels were
1799 there.

Q. There weren't two labels visible? A. Not until it was pulled off; except if they weren't pasted on properly.

Q. It might have come in a Uneeda Biscuit box? A. Well, yes.

Q. The label on the box as it came did label the contents as Arrow? A. Yes.

Q. What was inside, was Arrow as far as you know? A. To the best of my knowledge, yes.

Q. You did not mean somebody was handing you something you did not order under a false label? A. Oh, no indeed.

1800 Q. Now, as I understand it, you still distribute Arrow goods when people want them particularly? A. Yes.

Q. And if a man wants Hart & Hegeman goods, you can still get Hart & Hegeman goods for them? A. Yes, sir, we have been able to obtain Hart & Hegeman goods.

Q. By sending the order in to the Arrow-Hart & Hegeman Electric Company? A. Yes.

Q. When you said, "send it to Arrow", you mean to the Arrow-Hart & Hegeman Electric Company? A. Yes.

1801

Q. Wasn't there a man named Weber that used to call on you? A. I don't recall.

Q. Schwollow? A. Yes, Schwollow.

Q. I understand that about the time you started business, or at least from 1925 or 1926, until within the past year, you have always carried as your main line the Arrow Electric goods? A. Yes.

Q. And that you stopped carrying it because Varick carried Hart & Hegeman? A. Yes.

Q. During the three years Varick had carried Hart & Hegeman, hadn't he? A. Yes.

Q. And you carried Arrow? A. Yes.

1802

Q. Was there any difference in the goods that you carried in those three years? The quality was the same? A. Yes.

Q. The articles were just the same in worth and satisfaction, weren't they? A. Yes.

Q. You wanted to be the exclusive distributor, virtually, in Manchester, for the Arrow-Hart & Hegeman goods, isn't that it? A. At that time we wanted to be the exclusive agent for Arrow.

Q. And after the consolidation, you wanted to be the exclusive distributor for the consolidation? A. Yes, that is true.

1803

Q. And the only reason you dropped it is because they would not drop Varick, who was distributing H. & H.? A. Yes.

Q. Up to that time, when you learned of this merger, the consolidation, which took place about a year ago—not longer than that—up to that time you would get all the Arrow goods that you wanted? A. Yes.

Q. And you could have Hart & Hegeman goods if you wanted them? A. Up to that time?

Q. Yes. A. Not from the Arrow Co.

Q. But you could not get them? A. Yes.

1804 *P. J. Rossiter—Cross.*

Q. You were not prevented from getting Hart & Hegeman goods? A. No.

Q. Now, this J. J. Moreau, did he carry Weber goods? A. Yes.

Q. And Varick carried Hart & Hegeman? A. Yes.

Q. And you carried Arrow goods during 1925, 1926, 1927, 1928, and for that matter, 1929, up to a year ago: you three concerns were all in active competition in the electrical wiring business?

1805 Mr. Hayeraft: I object to that as misleading. I do not think he testified that Varick had been handling it all that time.

Q. How long has Varick been in business in competition with you? A. About three years.

(Discussion off the record.)

Q. During the years 1927 to 1930, inclusive, you and Varick and Moreau were engaged in competition in Manchester and vicinity looking for the sale of your respective goods in stock to the electric wiring device consumers of that country? A. Yes.

1806 Q. There was no change in the distribution of those goods during that time so far as your dealings with these concerns were concerned? A. No.

Q. Competition continued as before? A. Exactly.

Q. The label that you objected to, was it because of the combined title, "Arrow-Hart & Hegeman" on it; was it because it had "Hart & Hegeman" as well as "Arrow" on the box? A. I cannot say that. There is a difference in color, or was, between Hart & Hegeman and Arrow. The Arrow color is yellow; the Hart & Hegeman was bluish. The dis-

1807

tinguishing feature of Arrow was a yellow label; with Hart & Hegeman it was blue, or grayish blue. These packages contained both labels, one on the other. It might have said, "Arrow-Hart & Hegeman" on both of them.

Q. Well, as I understand it, you did not want to handle anything that came from Hart & Hegeman? A. That is right.

Q. You wanted to handle exclusively Arrow? A. That is right.

Q. And nothing that did not show "Arrow" on it? A. Yes.

1808

Q. You believed in the Arrow line and wanted that exclusively as far as you could get it? A. Yes.

Q. And you gave it up because they would not give you the complete line for the two companies? A. That would not give us—I presume so.

Q. I mean, you gave up your large line of Arrow distribution because— A. We felt we had a competitor.

Q. As long as Varick was going on, you would not keep on? A. That is right.

By Mr. Haycraft:

1809

Q. Do any other concerns now distribute the Arrow line in your territory in a wholesale way? A. Boston jobbers might go in there and sell it.

Q. There is no one located in Manchester or in that immediate vicinity? A. No.

Q. Do you know whether or not the Varick concern will take orders for Arrow? A. No, I don't.

Q. You don't know? A. No.

Mr. Haycraft: That is all.

(At this point, a recess was taken.)

WILLIAM H. GRANT, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you state your name? A. William H. Grant.

Q. Where do you live, Mr. Grant? A. Portland, Maine.

Q. What is your occupation? A. Department manager, Frank M. Brown Co.

1811

Q. In what business are they engaged? A. Wholesale distributors.

Q. Of what? A. Electrical supplies.

Q. Of what department do you have charge? A. Electrical supplies.

Q. What territory do you cover in your distribution? A. The State of Maine and certain parts of New Hampshire.

Q. Do you travel any salesmen? A. Yes.

Q. How many salesmen do you travel? A. We have two selling electrical supplies.

Q. How long have you been with the Frank M. Brown Co.? A. About two years.

1812

Q. What did you do before that? A. I worked for the Spencer F. Fearon Co.

Q. In the same capacity? A. Yes.

Q. For how long? A. About three years, I think.

Q. Before that, what did you do? A. I was with the Eastern Electric Supply Co.

Q. In the same capacity? A. Yes, sir.

Q. How long were you with them? A. About two years.

Q. In the present firm, the Frank M. Brown Co., what lines of electric wiring devices do you handle? A. Wiring devices?

1813

Q. Yes. A. Hart & Hegeman.

Q. That is the only line that you handle? A. It is the only line I am handling at the present time.

Q. Was that the line you were handling when you first came with them in 1929? A. Yes, sir.

Q. When you were with the Fearon Co. and the Eastern Supply Co., what line did you handle then? A. Which one, the Eastern Electric or Spencer Fearon?

Q. Either one.

Mr. Gross: State which one.

1814

A. Eastern Electric handled Arrow material. Spencer Fearon handled a little Arrow.

Q. Would you say the two lines were practically the same or different? A. Practically the same.

By Mr. Gross:

Q. You mean H. & H. and Arrow lines? A. Yes.

By Mr. Haycraft:

Q. At the time you were with Eastern Electric Supply Company, what Arrow salesman solicited your business? A. Mr. Nelson. 1815

Q. And after you went with the present firm, Frank M. Brown Co., did Mr. Nelson solicit your business for the Arrow Electric Co.? A. No.

Q. Or did any salesmen of the Arrow Electric Co. solicit that business? A. No.

Q. Who was the salesman that solicited your business for the Hart & Hegeman Co.? A. Mr. Karis.

Q. Did he do anything beside coming in and taking your order, and so on, or did he go out in a mis-

sionary capacity? A. Missionary work is a part of his line.

Q. What did he do along that line? A. Went out and introduced new items to the trade.

Q. To the trade you were selling to? A. Yes.

Q. What class of trade do you sell to? A. Electrical contractors.

Q. Principally. Do you sell any retail? A. Very little retail.

Q. Does Mr. Karis still call on you? A. He isn't in that territory.

1817 Q. Where is he now, do you know? A. I don't know for sure.

Q. Who solicits your Hart & Hegeman business now? A. Mr. Watts.

Q. Is it the same Mr. Watts who solicited for the Arrow Electric Co. previous to—that is, three or four years ago? A. I am not certain.

Q. Does Mr. Nelson solicit your business for the Hart & Hegeman? A. Well, he makes calls, not necessarily soliciting business.

Q. Is he in charge of the Hart & Hegeman business in that territory? A. As far as I know, yes.

Q. How long has that been true? How long has
1818 Nelson been in charge of Hart & Hegeman in that territory? A. I couldn't tell you exactly.

Q. Well, approximately? A. Approximately, I guess a little less than a year.

Q. Is that about the same length of time that Mr. Watts has been calling on you? A. He has been calling on me since the first of this year.

Q. Did Mr. Karis continue to call on you until the first of this year? A. Yes.

Q. What other distributors of electrical wiring devices are located in Portland? A. The General Electric Supply, Spencer F. Fearon Co., and Holmes Electric Supply Co.

1819

Q. Does any one of them handle the Arrow line? A. The Holmes Electric Supply does.

Q. Do you know how long the Holmes Electric Supply has been handling that line? A. Ever since it was established—since 1924, I think.

Q. Do you know whether or not Mr. Watts solicits the business from the Holmes Electric Supply Company for the Arrow line? A. I think he does.

Q. Did Mr. Nelson give you any explanation of why he was in charge of the Hart & Hegeman business, whereas he formerly represented the Arrow line— A. No.

1820

Q. —when he talked to you about it? A. No.

Q. Do you have any call at all for Arrow devices? A. No, sir.

Q. Has there been any change in the printed matter upon your containers in which your Hart & Hegeman products are now delivered and sold to your customers? A. Since when?

Q. At any time. Has there been any change? A. The change in labels went into effect, I suppose, when the consolidation went into effect.

Q. About how long ago did you first learn of that? A. I couldn't tell you definitely.

1821

Q. How long ago was it that you first observed that their labels were changed? A. I think the labels had been the same ever since I was in there —that is, the Hart & Hegeman Division.

Q. It would be "Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Company", is that the way it would read? A. Yes.

Q. Before that time, had you known or had you learned in any way that the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. were owned by a common owner? A. We had rumors that they were.

1822 *William H. Grant—Cross.*

Q. You don't recall any definite information to that effect? A. No.

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. Mr. Grant, you worked for the Eastern Electric Supply approximately in 1924 and 1925, is that about right? A. About the time I started to work for them?

Q. You were there two years; 1924 and 1925? A.
1823 Yes.

Q. Then, we will say, in 1926, 1927 and 1928 you worked for the Spencer Fearon Co.? A. Yes.

Q. What lines did Spencer Fearon carry, what makes? A. They handled Arrow Electric and Pass & Seymour.

Q. Who carried Hart & Hegeman in Portland at that time? A. Frank M. Brown.

Q. They were in business then? A. Yes.

Q. During that time, you were with the Spencer Fearon Co., 1926, 1927 and 1928, were the Spencer Fearon Co. and the Frank M. Brown Co. actively in competition with each other for the trade that
1824 they sold?

Mr. Haycraft: That is objected to for the same reason. I objected to that same line of examination the day before yesterday; first, it is not proper cross examination, and, second, it is incompetent, irrelevant and immaterial to the issues in this case.

Mr. Gross: The one issue is whether there is competition, and I can't understand my learned friend's—

1825

Mr. Haycraft: Well, we can't agree as to the issue. To me it is whether there is competition between the two manufacturers, Arrow and Hart & Hegeman. Counsel for the respondent seems to have another idea about that.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

Mr. Gross: Will you please read the question.

(The last question was repeated by the reporter.)

1826

A. Yes.

Q. Keen competition? A. Yes, sir.

Q. Was this General Electric Supply Co.—were they in business then?

Mr. Haycraft: Of course, my objection applies to that.

Examiner Reeves: Yes.

A. I don't think they were established then.

Q. Were there others? A. The Holmes Electric Supply.

Q. Were they going then? A. Since 1924, I think. 1827

Q. You were carrying Arrow, and Holmes was carrying Arrow? A. Yes.

Q. And you carried Pass & Seymour? A. Yes.

Q. Frank M. Brown carried H. & H.? A. Yes.

Q. So that during those three years, there were four concerns virtually competing in that territory for that business? A. Yes, sir.

Q. And the competition between those brands and between those houses to the trade continued just as intensively, and they were fighting each

1828 *R. J. McCabe—Direct.*

other for all the business in that territory all that time? A. Yes, sir.

Mr. Gross: That is all.

Mr. Haycraft: No further examination.

That concludes my case this morning. I have two witnesses subpoenaed for two o'clock daylight saving time this afternoon.

Examiner Reeves: The hearing will be adjourned to two o'clock daylight saving time.

(Whereupon, at 12.30 p. m., the hearing was
1829 adjourned to two o'clock p. m.)

AFTER ADJOURNMENT—2 P. M.

R. J. McCABE, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you please state the name. A. R. J. McCabe.

Q. Where do you live, Mr. McCabe? A. 7 Nor-
1830 ton St., Brookline, Mass.

Q. What is your occupation? A. Service manager to the Graybar Electric Co.

Q. How long have you occupied that position? A. Well—I have been with the present company 22 years.

Q. And where does it have its place of business here in Boston? A. 287 Columbus Avenue.

Q. How long have you been in the Boston office? A. Four years next October.

Q. In what business is the Graybar Electric Co. engaged? A. Electrical jobbing.

1831

Q. What devices does it handle? A. Practically all electrical material.

Q. Including electrical wiring devices? A. Yes.

Q. What line of electrical wiring devices does Graybar handle? A. Bryant, Hubbell and Hart & Hegeman.

Q. Was it handling Hart & Hegeman when you first came with them? A. Yes.

Q. That was in 1927? A. Yes.

Q. Would you say that you handle the full line of wiring devices of Hart & Hegeman as indicated in this catalogue, Commission's Exhibit 82? A. No, I don't.

1832

Q. What do you handle in that line? A. I should say—I don't know how many items there are in this, but I don't suppose we have 20 percent of the items that are shown in their catalogue. I suppose it would be less than that.

Q. What items would that be? A. That would be hard to pick out. It would be sockets, switches, plates, receptacles,—those are the largest items.

Q. Those are the principal items? A. Yes.

Q. Who connected with the Hart & Hegeman Manufacturing Co. solicited the business of Graybar Electric Company?

1833

Mr. Gross: When do you mean, Mr. Haycraft?

Mr. Haycraft: When he first went there.

Mr. Gross: 1927?

Mr. Haycraft: Yes.

A. I think Mr. Saladine was contacting us at that time.

Q. Any other salesmen? A. Since then a salesman by the name of Watts.

1834

Q. Does Mr. Watts still call on you? A. Yes.

Q. Does Mr. Saladine still call on you? A. At times. He just makes a visit.

Q. What was his position in 1927? A. He had charge of the local office. That is my understanding of it.

Q. Of the Hart & Hegeman Manufacturing Co.? A. Yes.

Q. Is he still in charge of that office, as far as you know? A. No, I don't know—he may be indirectly.

1835

Q. Have you met any one else in the Boston office of the Hart & Hegeman Co.? A. Yes.

Q. Whom else? A. Mr. Nelson.

Q. When did you first seem him? A. When Mr. Saladine left for Hartford.

Q. When was that? A. I should say approximately a year and a half ago,—something like that.

Q. Has Mr. Nelson continued to represent the Hart & Hegeman line in Boston since that time? A. Yes.

Q. About what percentage of your business would you say was the Hart & Hegeman product? A. I could give you an estimate only on that. I don't know how it is today, but I would say it was about during the past three or four years that I have been there, 20 percent of the business.

1836

Q. You are a general jobber, then, of various wiring devices, and did not at any time handle one particular line? A. No.

Q. Do you receive any sales service or any assistance in selling the Hart & Hegeman line? A. Yes.

Q. And did you in 1927? A. Yes.

Q. What does that service consist of? A. Why, their representatives call on the architects and contractors and industrials, and attempt to create a

1837

demand for their line. They tell them that we stock the material.

Q. Any orders that they might obtain are turned over to you? A. No, they have other jobbers. The customers express their preference as to who is to receive the order.

Q. Do you know who the other jobbers in Boston are? A. Yes. Wetmore Savage. I think that is all.

Q. During this period of time that you have been there, has any representative of the Arrow Electric Co. called on you to solicit your business? A. No, sir.

1838

Q. Were you acquainted with the local representative of the Arrow Electric Co.? A. Their local representative?

Q. Yes. A. Not until the Hart & Hegeman took them over.

Q. That is, not until Mr. Nelson came to see you? A. Yes.

Q. Do you know of any reason why Arrow Electric Co. did not solicit your business? A. They might have solicited it through some other source—through somebody else up there.

Q. Who else would be the one for them to solicit through? A. Fitzpatrick or Mr. Davis.

1839

Q. Have you handled any Arrow products at all? A. No.

Q. Do you know of any reason why you would not or do not handle it? A. Why, we have three lines now, and we consider that enough to take care of any business in schedule material.

Q. Will you explain for the record what you mean by schedule material? A. Wiring devices.

Q. Do you know who the local distributors of the Arrow line are? A. No, except in a general way.

1840 Q. Are you acquainted at all with the Arrow line? Do you come in contact with it? A. Yes, just from naturally being for 22 years associated in the business, you know something about it.

Q. Compared with the Hart & Hegeman line, what would you say about it? A. Do you mean from a quality standpoint?

Q. The various articles included in that. A. I would not know about the two lines to make any decision on that.

1841 Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. As you know the Arrow line, so far as you know it, would the Arrow material appeal to the type of customer Graybar in Boston caters to? A. You are talking from a quality standpoint?

Q. From what appeals to you, as to carrying or not carrying it? A. No, we would not want to carry it.

Q. Who carries it among your principal competitors in Boston? A. Why, it is only—

1842 Mr. Haycraft: He said he did not know, on direct examination.

A. (Continued) It is only in a general way that I know that. I couldn't tell you who they are.

Q. You have been with the Graybar here in Boston, as I understand it, for four years? A. Yes.

Q. That takes you back into 1927? A. Yes, four years in October.

Q. You came with the Graybar just at the time the holding company was formed, in 1927? A. Yes.

1843

Q. You were with the Graybar Company before you came to the Boston territory? A. Yes.

Q. In the Boston territory, since you have come with the Graybar Company, has Arrow, Hart & Hegeman, Pass & Seymour, General Electric, Weber, and all the rest of them, in the trade, been in active, keen competition? A. Yes.

Q. And it is just as keen as ever? A. So far as we find it, yes.

Q. Just an immaterial thing, but so that the record may be straight: Wasn't Mr. Albert Mann the Hart & Hegeman man that you first knew before Mr. Saladine? A. I never met him.

1844

Q. You never met Mr. Saladine? A. Until quite recently, but I never met him when he was representing the Hart & Hegeman Co.

Mr. Gross: That is all. Thank you.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. You were asked whether or not, as you knew the Arrow line, whether you would demand it or want it, and you replied you would not want to carry it. Will you explain why you made that answer? A. Well, that is—I would not want to carry it because—well, it is a line that I felt that the prices have not been just exactly healthy all the time.

1845

Q. Will you explain your answer on that. A. Competition is such that we simply could not meet that competition and have a normal profit.

Q. Would that be true now, or when you first came to Boston? A. That I couldn't tell. I don't think it has changed. I don't know. That is a general impression that I have from a lot of things

1846 *R. J. McCabe—Redirect.*

that you could not tell just where you get them, but—

Q. By that you mean that the jobbers who handled that line were allowing price concessions that you could not allow on the line you were handling? A. I would say possibly.

Q. So far as the quality is concerned, or the merits of the two lines—the Arrow line is equal to the Hart & Hegeman line? A. I don't know enough about the two lines to state that.

Q. This statement that you made, is that based
1847 upon the information that you obtained in the trade, from your customers or salesmen, or just where did you get that information? A. Well, both ways. It is just—if you were to ask me to point out some specific instance, I could not do it, but over a period of time, why, that is the impression I have of it.

Q. Of course, you are speaking now of the impression that you received since you came to Boston? A. Yes.

Q. Counsel for respondent asked you the question with respect to the keenness of the competition between the various manufacturers of wiring de-
1848 vices. I will ask you if you included in the answer the competition which had heretofore existed or might exist between the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. A. I don't quite get your question.

Q. Whether there is any competition between the Arrow Division of the Hart & Hegeman Co. and the Hart & Hegeman Division of the same organization, so far as you know? A. So far as our account is concerned, no, because we only handle the one line.

Mr. Haycraft: That is all.

1849

By Mr. Gross:

Q. You do notice competition between the two divisions in this territory, don't you? A. Well, from our competition—I answered that question before—from the competition we met in quoting.

Mr. Haycraft: That was between the distributors; not between the two divisions.

Q. The goods of the two divisions are in active competition in this territory? A. Yes.

Q. Just as active as ever? A. Yes.

1850

Q. That question of price that you are talking about was a question of the jobbers to their trade? A. Yes.

By Mr. Haycraft:

Q. Was that what you had in mind in answering the question propounded by Mr. Gross when he first asked you about the competition between the various lines? The question was not worded that way exactly, and I am asking you whether the competition was between the distributors rather than the manufacturers? A. Yes, it was.

1851

Q. So far as you know, there is no competition between the two divisions of this Arrow-Hart & Hegeman Electric Co. for the Arrow line or the Hart & Hegeman line in selling to the jobbers? A. Yes, there is. They have got men calling on the trade for Hart & Hegeman and also men for the Arrow.

Q. But would that necessarily mean that there is competition, if they were under the same sales manager? A. Well, I couldn't answer that.

1852 *Edward Loman—Direct.*

By Mr. Gross:

Q. You had three lines as I understand it; you carried three lines of wiring devices? A. Yes.

Q. You did not want a fourth? A. Yes.

Q. And that was known? A. Yes.

Q. There wasn't anything for the Arrow man to solicit? A. I can't answer that question.

Mr. Gross: That is all.

Mr. Haycraft: That is all.

1853 (At this point a recess was taken.)

Edward Loman, was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct Examination by Mr. Haycraft:

Q. Will you state your name? A. Edward Loman.

Q. Where do you live, Mr. Loman? A. 37 Edgermont Road, Brighton.

Q. What is your occupation? A. Well, I guess
1854 they call me the purchasing agent.

Q. For what firm? A. Milhender Electric Supply Co.

Q. How long have you occupied that position? A. Ever since the firm started in 1923.

Q. In what business is it engaged? A. Selling electrical supplies. Any description.

Q. What class of trade? A. Contractors, dealers, power companies.

Q. Do you have salesmen out traveling? A. On the road, yes.

Q. How many? A. Why, I think about a dozen.

Q. What particular type of electrical wiring devices do you handle? A. Of that line, 95 per cent Hart & Hegeman. 1855

Q. What other? A. A little Hubbell, a little Pass & Seymour; and a little Arrow once in a blue moon.

Q. Who solicits your business from Hart & Hegeman? A. A salesman by the name of Karis.

Q. How long has he been soliciting from you? A. I guess he has been with the company 10 to 15 years, around that.

Q. Do you know who was in charge of the Boston office of the Hart & Hegeman Co. back in 1927? A. I don't think they had their own office here, as I remember. 1856

Q. How were they represented? A. By an agent, by the name of Mann.

Q. Who succeeded him? A. Who succeeded him?

Q. Yes. A. They put in their own office.

Q. Who was their office man here? A. Mr. Saladine, of the H. & H. Company.

Q. And is he still their local representative? A. He is not. He is now at the factory.

Q. Who is the local representative? A. Mr. Nelson.

Q. How long has he been in charge? A. I guess since over a year or a year and a half, or so. 1857

Q. During the period of time, say, since 1927, up to the present time, did any one solicit your business for the Arrow Electric Co.? A. Mr. Nelson has, yes.

Q. The same Mr. Nelson who is now in charge of Hart & Hegeman? A. Yes.

Q. Does the Hart & Hegeman Co. render any service in the way of helping you to make sales of your product? A. Oh, yes, very much.

1858 *Edward Loman—Direct.*

Q. What? A. Mr. Karis calls on our accounts and tries to get us all the business he can. He talks with contractors and dealers.

Q. Do the Arrow salesmen do the same thing? A. Yes, I understand they do.

Q. At the present time? A. Yes.

Q. Who are the salesmen? A. I don't know them very well, because I don't have as much to do with them as with the H. & H. men. Weber is one of them. He is the one I know mostly.

Q. Does he still call on you in an attempt to get
1859 you to buy Arrow products? A. He was in the other day.

Q. How long ago? A. One day last week it was.

Q. What did he have to say? A. Why, I had an order to transfer to H. & H., which Mr. Nelson didn't like very much.

Q. And what did Mr. Nelson say about it? A. The usual kidding.

Q. Did Mr. Nelson try to get you to fill the order with Arrow products? A. Well, he tried to, because I think he liked to have that division ahead of the H. & H.

Q. Is he in charge of both divisions? A. So I
1860 understand now.

Q. How are the articles that you have handled stamped or labeled? A. H. & H.

Q. And how are the containers, the containers that come to you now? A. The containers that come to us now are marked "H. & H. Arrow." That is, the H. & H. Division of the Arrow-H. & H. Company.

Q. H. & H. Division of the Arrow-Hart & Hegeman Electric Company? A. Yes.

Q. How long have they been coming to you that way? A. I don't know.

Q. You don't remember when you first noticed it? A. No.

Q. Have you seen any items or any devices marked "Arrow-H. & H."; both brands on it? A. Not yet.

Q. Have you had any conversation with Hart & Hegeman salesmen with respect to those brands? A. Yes, I understand that on the new items, that they are going to be marked "Arrow-H. & H."

Q. Who told you that? A. Mr. Karis.

Q. Do you know what jobbers in Boston are handling the Arrow line? A. Voye Electric Supply Co. is the biggest distributor.

Q. Were you acquainted with the Arrow products in, say, 1927? A. Well, I know them, but not as long as I know the H. & H.

Q. Do you know whether or not the lines are similar, or are they different? A. The lines are similar on new items, but they have each old items that each does not make.

Q. At the present time, on the new ones— A. All the new ones that are coming out are the same. They are using the same catalogue numbers.

Mr. Hayeraft: That is all.

CROSS EXAMINATION BY MR. GROSS:

Q. I think you perhaps misunderstood, or perhaps I misunderstood, the last question. You said the new items are coming through "Arrow-H. & H." You have never seen any, have you? A. No, not yet.

Q. All the goods that you carry are marked "Arrow"? A. They are either Arrow or H. & H.

Q. Separately? A. Yes, separately, not together. I have not seen one yet.

1864 Q. Now, in 1927, was the Voye Electric Co. then the biggest Arrow distributor, as far as you know? A. I don't think so, but I think the Lewis Electric Co. was a large distributor. They are now out of the supply business.

Q. The competition between your company and Lewis and other concerns here in Boston for getting the business from the contractors, builders, and so forth, was keen in 1927, was it?

Mr. Haycraft: I just want to place my ob-

1865 jection on the record as to this line of examination.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

Q. It was keen in 1927? A. Yes.

Q. And continued through 1927 and 1928? A. Yes.

Q. Is it keen now? A. It is keener now.

Q. Keener now? A. Yes.

Q. And competition since H. & H. was handled by the Voye Electric Co., is just as keen? A. Just as keen, if not keener.

1866 Q. Do you think it is going to be keener when they have the trade-mark "H. & H. and Arrow"? A. Yes. Of course, there are contractors and wholesalers who refuse to use H. & H. or Arrow.

Q. What are they going to do? A. I haven't seen the—

Mr. Haycraft: I object to that.

Examiner Reeves: Sustained.

Mr. Haycraft: I move to have the answer stricken out.

Examiner Reeves: It may be stricken.

1867

Q. This label; the label has H. & H. Division, where it used to say "H. & H. Manufacturing Co."? A. Yes, H. & H. Division.

Q. The label still indicates it is H. & H. goods? A. Oh, yes.

Q. And the same color? A. The same color.

Q. And the same get-up? A. Yes.

Q. The only difference is the "Arrow-Hart & Hegeman Electric Co."? A. Yes.

Q. But it is clearly differentiated between the two divisions? A. Yes.

By Mr. Haycraft:

1868

Q. The articles are the same as you can buy from the Arrow Electric Division? A. They are all the same price. They are all different catalogue numbers and they are all different prices.

Q. And they are manufactured in the same place?

Mr. Gross: He doesn't know that.

A. I don't know. They have half a dozen plants down there where they make these different things.

Mr. Haycraft: I guess that is all.

Mr. Gross: That is all. Thank you.

Mr. Haycraft: I ask an adjournment to 11.30 o'clock daylight saving time June 5, at New York.

1869

Examiner Reeves: The hearing will be adjourned to Friday, June 5, 1931, at 11.30 o'clock a. m., daylight saving time, to reconvene in Room 200, 45 Broadway, New York City.

(Whereupon, at 3.45 p. m., June 3, 1931, the hearing was adjourned to June 5, 1931, at 11.30 a. m. daylight saving time in Room 200, 45 Broadway, New York City.)

Room 520, 45 Broadway, New York City.

June 5, 1931.

Met pursuant to adjournment, 11:30 A. M., day light saving time.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

E. H. HAYCRAFT, Attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of GROSS, HYDE AND WILLIAMS, 49 Pearl Street, Hartford, Connecticut, Attorneys for the Respondent.

PROCEEDINGS.

Examiner Reeves: You may proceed, gentlemen.
Mr. Haycraft: I will call Mr. Colyer.

ARNOLD S. COLYER, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you please give your full name? A. Arnold S. Colyer.

Q. What is your address? A. 180 Varick St., New York City.

1873

Q. What is your occupation? A. Buyer for the Graybar Electric Co., Eastern Division.

Q. In what business is that company engaged? A. Electrical jobbing business.

Q. How long have you occupied that position? A. Ten years.

Q. What products do you handle? A. The products that are necessary in the construction of buildings; electrical equipment and appliances.

Q. And what class of trade do you sell to? A. Contractors and industrials.

Q. Do you travel any salesmen? A. Yes, sir.

1874

Q. What territory do they cover? A. Our salesmen cover the entire States of New York, Connecticut, and the northern half of New Jersey.

Q. How many salesmen do you travel? A. Approximately 43.

Q. Have you had any business dealings with the Hart & Hegeman Manufacturing Co.? A. Yes, sir.

Q. When did those business dealings begin? A. I think before I was with the company, and I have been with the company 17 years.

Q. What products did you buy from them, say, back in 1927, four years ago? A. Material which we had call for from our contractor accounts,

1875

which was specified.

Q. What would that include? A. Primarily I should say switches and plates,—commodities of that character.

Q. Sockets, plugs? A. Possibly plugs. I would not say very many sockets.

Q. And have you continued to deal with that concern since that time? A. Yes, sir.

Q. In 1927, who solicited your business from the Hart & Hegeman Manufacturing Co.? A. I should say Mr. Wilson. I am not sure.

1876

Q. What position did he occupy in that organization, if you know? A. I don't know.

Q. How often would he call on you? A. He saw us once every three months, I should say.

Q. Did you receive the catalogues of the Hart & Hegeman Manufacturing Company at that time? A. Yes, sir.

Q. Do you recognize Commission's Exhibit 67 as one of such catalogues? A. Yes, sir.

Q. How would you submit your orders for the products listed? A. By their catalogue number.

1877

Q. Did you mail them in or give them to the salesmen? A. Mail them in to the Hartford address.

Q. Did they give you any service, that is, missionary service; would the salesmen call on manufacturers and interest them in the Hart & Hegeman line? A. I don't know, but I believe they did.

Q. Did you receive any orders obtained in that way? A. I could not say.

Q. Did Mr. Wilson continue to solicit your business since 1927? A. Yes, sir.

Q. Until when? A. Up to possibly two years ago —a year or a year and a half ago.

1878

Q. And then who solicited that business? A. The last person I remember seeing was Mr. Saladine.

Q. What are Mr. Saladine's initials? A. J. W.

Q. Where did he come from, out of what office? A. From the Hartford office.

Q. Do you remember when he first called on you? A. No, sir, I don't.

Q. Has he continued to solicit business since that time? A. I think Mr. Saladine has been in three or four times since; in fact, I know he has.

1879

Q. Has any one else solicited the Hart & Hegeman business? A. Yes, sir, there is one other New York salesman whose name I do not recall.

Q. Is it Mr. Deacon? A. I think that is the name.

Q. Is it this gentleman sitting right over there? A. No, that is not the man who came down with Jack Saladine. No, I don't think he is. I remember he came down and introduced him to me, but I don't recall his name.

Q. At the present time, how do the Hart & Hegeman products come to you; that is, what brand or label appears on the containers or box in which they are shipped? A. I can't answer that, because I haven't looked at them.

1880

Q. Have you seen a recent catalogue of the Hart & Hegeman Manufacturing Company? A. Yes, sir.

Q. Can you identify this exhibit 82 as their latest catalogue? A. I think it is their latest; it looks like it.

Q. I notice on the inside that the descriptive matter has Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Company? A. Yes, sir.

Q. How long have you understood that the Hart & Hegeman Manufacturing Company was a part of the Arrow-Hart & Hegeman Electric Company? A. I really don't remember. There was a circular letter which came, but I don't recall when it was.

1881

Q. I show you a copy of Commission's Exhibit 18, and ask if you recognize that as a copy of the circular letter? A. No, sir.

Q. Do you have any recollection of receiving that letter? A. The letter which I refer to was a much shorter letter.

Q. Do you have any idea about how long ago it was that you received it? A. No, I have not.

1882 *Arnold S. Colyer—Direct.*

Q. During that period of time, from 1927 to the present time, has any representative of the Arrow Electric Co. solicited your business? A. I don't recall ever seeing anybody from them, no.

Q. Had you purchased any products from the Arrow during that time? A. Yes, sir.

Q. Would that be substantial or otherwise? A. That would be otherwise.

Q. How do you account for the purchases that you have made? A. They have been specified on orders that we received; either contractors or in-

1883 dustrial accounts.

Q. Did your salesmen solicit that item from your customers? A. No, sir.

Q. What business do they solicit, what line? A. They solicit eight or nine hundred lines.

Q. I mean, of this particular type, wiring devices? A. It is whatever is called for in the engineers' specifications; in the architects' specifications.

Q. Are you acquainted with the Arrow line; that is, have you seen the products in the trade? A. No, I have not.

Q. Have your salesmen reported to you with re-

1884 spect to items that are sold by the Arrow Electric Co. or the Arrow Division of the Arrow-Hart & Hegeman Electric Co.? A. I don't recall any reports.

Q. By that—what I am trying to get at is, do you know the type of product that is sold by the Arrow Division of the Arrow-Hart & Hegeman Electric Co.? A. I have an idea of the type of material.

Q. How would it compare with the Hart & Hegeman line? A. Are you talking about 1926?

Q. Talking about 1926 and 1927 and also the present time. A. I would say they—the items were similar to that made by the Hart & Hegeman Manufacturing Co.

Q. How about the present time? A. I had a look at one of their new catalogues.

Q. You had one in your office? A. I believe there is one there, yes, sir.

Q. I call your attention to Exhibit 81, and ask if you can identify that? A. Yes, sir.

Q. What would you say then as to their products at the present time? A. I would say they had a similar line at the present time.

Q. Do you know who is in charge of the New York office of the Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Company, at the present time? A. I couldn't say right offhand.

Q. Did you ever meet Mr. Deacon? A. No, I never have, except here today.

Q. Did Mr. Saladine acquaint you with any change in the sales organization of the Hart & Hegeman Manufacturing Co. after the death of Mr. Wilson? A. No, sir.

Q. He didn't discuss that with you? A. No, sir.

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. Mr. Colyer, in 1927, if you recall, what other lines of electrical wiring devices did you carry besides H. & H.? A. Bryant and Hubbell.

Q. Did you carry H. & H. in large stock, or not substantial? A. Not substantial.

Q. In other words, you selected from H. & H. or Bryant or Hubbell the particular lines that were

called for in your particular trade? A. That which was covered by the contractors' specifications.

Q. In other words, you were carrying goods, ordered goods, or carried goods in stock which you believed best in the trade to which you catered? A. Yes.

Q. Was competition in 1927 with other electrical jobbers keen in New York?

Mr. Haycraft: That is objected to for the same reason.

1889 Mr. Gross: The same question that we had before?

Mr. Haycraft: Yes.

Examiner Reeves: I think that on previous occasions I overruled the objection, and I believe that possibly the objection should have been sustained in some instances, because it is probably asking the witness to state a conclusion, rather than a fact.

Mr. Gross: I do not want to argue with the Examiner, but it seems to me that a gentleman who is buying and selling electrical wiring devices knows whether he has competition.

1890 Examiner Reeves: Have him state that he has competition.

Q. Who were your principal competitors that you had in selling your goods here in New York City, say, in 1927? A. The General Electric Co., Westinghouse, Crannell, Nugent & Kranzer, and Stanley & Patterson.

Q. Were those concerns soliciting trade from the same the substantial class of trade that you were? A. Yes, sir.

Q. Were they all active in promoting their line? A. Yes, sir.

Q. What are some of the lines that those other people carried?

Mr. Haycraft: I understand the same general objection goes to this line of examination.

Mr. Gross: This is not a conclusion; it is a fact.

Mr. Haycraft: I want my objection to his interrogation of the witness in respect to competition between himself and other distributors.

Mr. Gross: I thought that was the issue,— competition. 1892

Mr. Haycraft: Between the manufacturers.

Examiner Reeves: The objection will be overruled.

Mr. Haycraft: Exception.

(The last question was repeated by the reporter.)

A. I am not in a position to tell you definitely. I don't know what other makes. Some carry similar lines to which we carry.

Q. Does General Electric have a line being dealt in? A. General Electric, yes, sir. 1893

Q. Does Pass & Seymour have a line here being dealt in in New York? A. Yes, sir.

Q. At that time, in 1927? A. Yes, sir.

Q. Hubbell? A. Yes, sir.

Q. Do you know of the Arrow being carried at that time? A. I don't know.

Q. Was there any change in 1927 and 1928, that is, for those two years, in the activity of your competitors and in the trade generally in New York for business? A. I am not prepared to answer that question unless I made comparisons.

1894 *Abe Lipsky—Direct.*

Q. Has that competition that you testified in 1927 continued at the present time? A. Yes, sir.

Mr. Haycraft: I move to strike out the last answer. As I understand it, the Examiner has sustained my objection to that as a conclusion.

Q. Whether that still exists in 1931. A. I think so.

Q. Has there been any let-up in the H. & H. Division in the sale of its goods, not only to you, but
1895 in promoting sales to the ultimate consumer? A. I really don't know.

Mr. Gross: I think that is all.
Mr. Haycraft: That will be all.

ABE LIPSKY, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. What is your name? A. Abe Lipsky.
1896 Q. Where do you live? A. Newark.
Q. New Jersey? A. Yes.
Q. What is your occupation? A. Electrical supplies.
Q. Do you operate under your own name or under a corporation? A. A corporation; the Monarch Electric Supply Co.
Q. How long has the Monarch Electric Supply Co. been engaged in that business in Newark? A. Since 1925, the first day of 1925.

1897

Q. Included in the electrical supplies that you handle, are there what are known as electrical wiring devices? A. Yes, sir.

Q. During the period of time since you were organized, have you had any business dealings with the Hart & Hegeman Manufacturing Corporation? A. Yes, sir, we started with the Hart & Hegeman line when we first started business. It was the first line we had.

Q. And have you continued to sell their products? A. Yes.

Q. Since that time? A. Yes, and we have some additional lines today.

1898

Q. What additional lines do you handle? A. In between 1926 and 1927, we had the Arrow line, and then we took on the P. & S. and Hubbell and Bryant.

Q. Which is the principal line? A. Hart & Hegeman.

Q. Who called on you first in soliciting the business in the sale of the Hart & Hegeman line? A. A fellow by the name of Ross.

Q. Ross? A. Yes. He is working with Pass & Seymour now.

Q. Did he come out of the New York office? A. Yes, sir.

1899

Q. I show you Commission's Exhibit 67, and ask if you recognize that as a catalogue of the Hart & Hegeman Manufacturing Company back in 1927? A. It is hard for me to recognize that, because we have only—they have special sheets in a binder that we use ourselves.

Q. You have your own catalogue? A. Yes.

Q. Has Mr. Ross continued to solicit your business since 1927? A. Since 1927 or 1928; that is when he quit his job.

Q. Who solicits your business now for the Hart & Hegeman products? A. Fellow by the name of Gabry.

Q. Does he also travel out of the New York office? A. Yes, he works in the New York office.

Q. Does he still call on you? A. Yes, sir.

Q. Did he ever tell you who was in charge of the New York office at the present time? A. I never had any occasion to ask him that and he never told me.

Q. What territory do you cover in your sales?
1901 A. Just New Jersey.

Q. What class of trade do you sell to? A. Electrical contractors and some stores.

Q. That is, retail stores? A. Hardware stores and the smaller electrical stores.

Q. You say at one time that you handled the Arrow line, in 1926 and 1927? A. Yes, sir.

Q. Did you continue to handle that line from that time on? A. No, for a year or a year and a half, and then we gave it up.

Q. Why did you give it up? A. Because they had too many distributors to suit us; H. & H. had less, and we figured we started with H. & H., we ought
1902 to give them a better break on their merchandise.

Q. How would that affect your business, by the number of distributors? A. The majority of the customers call for H. & H. material even today.

Q. How would that, the larger number of distributors, affect your business? A. It didn't affect our business at all.

Q. Why did you give it up? A. Because we did not want to have too many lines. At that time we had about five. I spoke to my partner and said: "We carry too many lines," and we decided to remain on Pass & Seymour and Hart & Hegeman and Hubbell.

Q. At that time, in 1926 and 1927, who was selling the Arrow goods in the Newark territory? A. I couldn't just recall his name. 1903

Q. I mean, what wholesalers and dealers? A. The Arrow line?

Q. Yes. A. About five or six of them.

Q. Do you remember the names of them? A. There was the Eastern Electrical Supply Co., the Beller Electric Supply Co., the Star Electric Supply Co., the Newark Light Company, the New Jersey Electric Supply Co. and the Monarch.

Q. And do all of them still handle the Arrow line? A. I don't think so. I think Beller hasn't, and Monarch hasn't, but the rest of them I don't know. 1904

Q. You don't recall who solicited your business from the Arrow Co. back in 1926 and 1927? A. No, I couldn't recall his name, but he is a tall fellow, a six-foot fellow.

Q. Did Mr. Webster? A. Yes, that is right, that is his name.

Mr. Gross: What year was that?

The Witness: In 1926 and 1927.

Q. That is the man who solicited the Arrow business? A. Yes. 1905

Q. How long did Mr. Webster solicit that business? A. For about a year and a half, until we gave it up.

Q. Do you know where he is now? A. No, I don't.

Q. Who succeeded Webster in soliciting the Arrow line? A. Mr. Durant.

Q. How long did he solicit your business? A. Why, he came in there once in a while, because we gave it up after Webster left, and he used to come in and try to get some business, until he stopped coming.

Q. How long has it been since he has been in there? A. About four years ago.

Q. Has any other salesman representing the Arrow Company come to see you during that time? A. No.

Q. Are you acquainted with Mr. Deacon? A. Yes.

Q. Was he in charge of the Arrow business in 1927 for the New York office? A. Yes, sir.

Q. Do you know what position he now holds in the organization in New York? A. Who?

Q. Mr. Deacon? A. I believe he is general sales
1907 manager for New York.

Q. Of what? A. Of Arrow-Hart & Hegeman, today.

Q. When did you first learn that he was in charge of both divisions? A. I can't recall that.

Q. How do the containers that contain the Hart & Hegeman products come, that is, how are they labeled now? A. White labels.

Q. What is printed on them? A. I never took any attention of that.

Q. Has it just "Hart & Hegeman" on it, or has it— A. I believe it has "Hart & Hegeman Division of the Arrow Electric Co."

1908 Q. Arrow-Hart & Hegeman Electric Company? A. Something like that.

Q. How long have they been stamped like that? A. For about a year and a half, or so.

Q. From your knowledge of the two lines, would you say that they were different lines or about the same products? A. Well, before the Arrow was always a bigger line than Hart & Hegeman Co., more progressive. The rest of the manufacturers followed in three or four months after. Today, I guess, they have the same line together.

Q. In other words, Arrow had usually a broader line? A. Yes, more progressive than any other manufacturer.

Q. Did their sales policy have anything to do with the dropping of their line? A. No; always made demand for that H. & H. line.

Q. Will it refresh your recollection by reading the second paragraph of the paper I hand you now (Handing paper to witness)? A. That is what I said.

Q. I ask you again whether or not the sales policy of the Arrow Company had anything to do 1910
with the dropping of their line? A. I couldn't recall that. The only reason we gave it up was because we had too many lines at that time, and we figured the two lines are pretty near alike—the receptacles and switches, and we figured one line would be enough for us, and that is the only reason we gave it up.

Q. That is, the same products with different brands? A. Yes, that is, all different labels, but their switches, receptacles and sockets and whatever they make are alike.

Q. At the time you gave up the line, who was calling on you for the Arrow Electric Co.? A. It 1911
was Webster.

Q. Webster and Deacon? A. Deacon used to come in about every six months.

Q. Did they ask you for an explanation why you gave up the line? A. No, they were trying to get business, but we told them that we couldn't afford to handle it. It is hard to remember. It is three or four years ago.

Q. Did the salesmen of the Arrow Electric Co. help you in getting business from your customers by calling on them and interesting them in the

1912 Arrow line? A. I never heard of any complaints like that.

Q. I mean, did they ever try to get orders for you? A. The Hart & Hegeman salesmen?

Q. No, the Arrow salesman. Did he try to interest your customers in that line? A. I don't think they had any missionary men at that time. They had a fellow, I believe, who used to call on jobbers only.

Mr. Haycraft: I think that is all.

1913 CROSS EXAMINATION BY MR. GROSS:

Q. It is a fact that the articles of the H. & H. and Arrow are substantially the same? A. Generally, on the main lines.

Q. Isn't that also true with Pass & Seymour and Hubbell and Bryant lines? A. Well, Pass & Seymour only recently started to break into these lines. They are making more than they used to. They used to be interested in their porcelain line only; they never cared for any switches. It is only two years now that they started in that.

1914 Q. How about Hubbell or Bryant? A. Hubbell had a policy years ago that they only used to sell to one distributor in every town. If they had one distributor, they had enough for them.

Q. Did you have the Hubbell line? A. No, not at that time.

Q. Who had it at that time, in 1927? A. The Newark Electric Supply.

Q. Who had the Bryant line then? A. The Bryant was also Newark; also Westinghouse.

Q. What are the four lines that you had at that time? A. We had the Arrow and Hart & Hegeman

and Pass & Seymour, and—that was in the beginning of 1927—we took in the Hubbell.

Q. And you still have it? A. Yes.

Q. What were the two other lines that you had, of your five or the other one? A. We had for a short time Weber.

Q. The Weber line? A. Yes, but our customers did not care for it, and we gave it up in a short time.

Q. It was the demand of your customers that fixed the line that you carried? A. The demand. As far as I can remember, for the last six years they did demand Hart & Hegeman. If a customer would specify a Hart & Hegeman number, it would have to have the Hart & Hegeman label on it.

Q. In other words, the brand on the box is a large part of the selling effort? A. The name. I had only a case last week. One of my customers orders 12 dozen door switches. They specified H. and H., and we did not have H. and H. in stock, and we gave them Diamond H,—that is the Hart Manufacturing Co.—and they returned them the next day, and we had to order 25 dozen just to fill his order for their switches. The other switches are just as good—it looks like it, but it had to have the Hart & Hegeman name on it.

Q. It is the name that helps? A. In some cases.

Q. In other words, the Hart & Hegeman label has a reputation that sells goods? A. In New Jersey it has. I don't know about New York.

Q. Was that true in 1927, as far as you can remember? A. I really believe it is because we started with the Hart & Hegeman line in 1925, and we built that up, and we tried to get our customers to take this line, and now they insist on it.

1918

Q. It is still true, that they want it? A. They want the H. & H. Label on it; the majority of them do.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. In 1927, you made very substantial purchases of Arrow products, didn't you? A. Well, I guess the first time when we placed that line, if I could remember, we had to place an order for two or three thousand dollars. No manufacturer would

1919

put you on if you did not give them the right kind of order.

Q. When did you start with that line? A. I can't recall that. It is very hard.

Q. If I should say that sales to your company were around six or seven thousand dollars in 1927, would that refresh your recollection?

Mr. Gross: By whom?

Mr. Haycraft: By the Arrow.

A. For the year 1927, approximately $7,000?

Q. Between $6,000 and $7,000? A. That is not large. I believe we bought three or four times as

1920

much from Hart & Hegeman.

Q. How did you make those sales? In other words, did you go out and solicit the business and push the Arrow line? A. We had men to do it.

Q. Did the Arrow line give satisfaction? A. No, most of our customers insisted on H. & H.

Q. I thought you said a moment ago that the only reason ypu dropped the Arrow line was because you did not want to carry so many lines? A. That is one of the reasons, but the most up-to-date is the Hart & Hegeman. They are getting most of our

1921

business. We are selling their line 80 per cent. An average distributor gets $150 or $250 a month, whereas H. & H. gets $1800, $2,000, $2,500. We are selling the Hart & Hegeman line 80 per cent.

Mr. Haycraft: That is all.

BENJAMIN GOLDEN, was thereupon called as a witness, and being first duly sworn, testified as follows:

1922

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you please give your name. A. Benjamin Golden.

Q. Where do you live? A. Newark, N. J.

Q. What is your occupation? A. Electrical supplies.

Q. Do you operate under your own name, or— A. The Eastern Electrical Supply Co.

Q. Is it a corporation? A. Yes.

Q. What is your official position? A. Vice-president.

Q. How long have you been in that business? A. 1923
Since 1914.

Q. How long has the Eastern Electrical Supply Co. been in business? A. Since 1912.

Q. What territory do you cover? A. All of New Jersey.

Q. Do you travel salesmen? A. Yes.

Q. How many? A. Seven.

Q. During that period of time, have you had any business dealings with the Hart & Hegeman Manufacturing Company? A. Yes, sir.

1924 Q. And when did you start having business dealings with them? A. I am bad on dates, but I imagine the past five years.

Q. And during that time, have you had any business dealings with the Arrow Electric Co.? A. Yes, we have had them longer.

Q. How long did you purchase goods from the Arrow Electric Co.? A. I imagine 8 or 9 years—something like that.

Q. You started with the Arrow? A. We had Arrow before we had Hart & Hegeman.

1925 Q. When you first started to handle the Arrow line, who solicited your business? A. I don't know. I could not answer.

Q. Back in 1927, do you remember who it was then? A. I think it was Webster, and Mr. Deacon.

Q. Who succeeded Mr. Webster then? A. Mr. Durant.

Q. How long did Durant solicit your business for Arrow? A. I guess until he left them; maybe six months ago.

Q. Who succeeded him then? A. I don't know. I have not been active in the purchases.

Q. How long has it been since you have been
1926 active in the purchases? A. I do it, but I have a fellow on it since about six months.

Q. What lines did you handle principally when you started? A. Arrow and Pass & Seymour.

Q. How long did you continue to handle the Arrow line? A. We still carry some of it.

Q. You carry some in stock? A. Yes.

Q. I ask if you recognize Commission's Exhibit 88 as a catalogue of the Arrow Company? A. I do.

Q. Back in 1927, can you recall about what percentage of your business would be purchases you made from Arrow? A. I don't.

Q. Well, was it more then than now, or less? A. I think so; more.

Q. More? A. More.

Q. Comparing 1927, say, with 1928, 1929 and 1930, has there been an increase or a decrease in your purchases from Arrow? A. Decrease.

Q. How do you account for that? A. I can't account for it; I don't know. One salesman works a little harder than another, I suppose.

Q. At that time did the Arrow Company have what is known as missionary salesmen in going out and assisting you in the sale of your product? 1928
A. I guess they would go if we asked them. None of them will do too much for you.

Q. Did Mr. Deacon continue to represent the Arrow Electric Co. in soliciting your business? A. Yes, sir.

Q. During that period of time, did you have any business dealings with the Hart & Hegeman Manufacturing Company? A. Yes, sir.

Q. When did you first start with them? A. I imagine five years ago.

Q. Has your business increased or decreased? A. It has increased, and now it has decreased. That is not their fault, though.

Q. Comparing 1927 with 1928, 1929 and 1930, was 1929
there an increase? A. Yes, H. & H. went ahead.

Q. How do you account for the increase? A. I guess we pushed it a little harder.

Q. Was there any difference in the profits that you might make in the two lines that would make you push one harder? A. It would have to be more profitable business for us to push it.

Q. Did you get any more assistance from the Hart & Hegeman missionary men? A. Yes, sir.

1930 Q. Who is the salesman who originally solicited business for Hart & Hegeman? A. Ross.

Q. How long did he stay with the Hart & Hegeman Company? A. A few years.

Q. Who succeeded him? A. Gabry.

Q. Does Gabry still represent them? A. Yes, sir.

Q. Do you know who is in charge now of the Hart & Hegeman salesmen in the New York territory? A. I do.

Q. Who is? A. Mr. Deacon.

Q. Do you know how long he has been here? A.
1931 A little while after Wilson died.

Q. About how long would that be? A. I don't know.

Q. Does Mr. Gabry call on you quite regularly? A. Yes.

Q. About how often? A. A couple of times a week.

Q. How long has it been since an Arrow salesman called on you? A. Maybe six months.

Q. Comparing the two products, what would you say— A. They are about equal.

Q. —and about the same line? A. Yes.

Mr. Haycraft: That is all.

1932 Cross Examination by Mr. Gross:

Q. When you said that the Hart & Hegeman sales recently decreased, but it wasn't their fault, you meant business conditions generally in the country? A. Yes.

Q. And their sales effort to you had been just as active and just as progressive as ever? A. Absolutely.

Q. When you say that the Hart & Hegeman line -proved more profitable to you, you mean there was more demand for it? A. That is right.

1933

Q. Was the competition in 1927—was there active competition between you and Newark and Monarch, Beller and the Star companies in Newark?

Mr. Haycraft: I object to that, Mr. Examiner, for the reasons already stated.

Examiner Reeves: I think, Mr. Gross, that you are asking him merely to state a conclusion.

Mr. Gross: I am simply asking him whether there was active competition.

1934

Mr. Haycraft: I do not want it understood that I am unduly pressing it, but it seems to me that it is only a conclusion that any man might make.

Examiner Reeves: I have overruled two previous objections, but I am inclined to think that I was in error.

Q. In 1927, were these other companies, Beller, the Star, the Newark, the New Jersey, and Mr. Lipsky's company, the Monarch, progressive, active concerns in the business? A. Yes, sir.

Q. Were they all selling similar lines to yourself? A. Yes, sir.

1935

Q. Are most of these companies still active? A. Yes.

Q. And conditions among yourself and those others are the same as they were then? A. Yes.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Is the Beller Company and Monarch pushing the Arrow line as they were in 1927? A. I don't know.

1936

Q. When you say the conditions were the same, what do you base it on? A. On general wiring devices.

Q. One concern may have dropped out without your knowing of it? A. Yes.

RECROSS EXAMINATION BY MR. GROSS:

Q. Did you state what other lines besides Hart & Hegeman you carried? A. Hart & Hegeman, Pass & Seymour, Arrow, Hubbell; some of Bryant.

1937

Mr. Gross: That is all.

BY MR. HAYCRAFT:

Q. When your salesman goes out and calls on the trade, what lines does he push? A. I guess every one pushes a different line; whoever they like. They do a favor to the line. Pass & Seymour or Hart & Hegeman.

Mr. Haycraft: That is all.

BY MR. GROSS:

1938

Q. What you sell is largely determined by what your customers want? A. Yes.

Q. Many customers want one line? A. Yes.

Q. Some insist on Hart & Hegeman? A. Yes.

Q. Some on Arrow? A. Yes.

Q. Some on Pass & Seymour? A. Yes, absolutely. In a general way, we have to give them what they want.

Q. The real competition is in the field, in the trade, isn't it? A. Yes.

1939

BY MR. HAYCRAFT:

Q. If that is true, you could discharge all your salesmen? A. They won't all buy from us. If I thought so, I would.

Q. If the brands alone sell themselves, why do you have salesmen? A. Well, there is a certain building going up, and they may have made demand for certain merchandise, but there are 15 jobbers trying to get that.

Q. I understand, then, from your answer that your salesmen are merely order takers? A. I would say you are right, but they say they are not.

1940

Q. You don't think, then, that they try to convince a customer that a certain product is better than another? A. They do.

Q. They do? A. Yes, I am sure they do.

Q. Then you were just jesting a moment ago? A. They will push it, but a lot of our merchandise is specified. You pick up a specification, and they say that Hubbell has done fine work among the builders and architects, and naturally we try to please them and give them what they specify.

Q. The Arrow has not done as much work along that line? A. I don't think so.

1941

EDWIN BURKHEIMER, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. What is your name? A. Edwin Burkheimer.

Q. Where do you live? A. East Orange, N. J.

1942 *Edwin Burkheimer—Direct.*

Q. What is your occupation? A. Electrical jobbing.

Q. And where do you have your place of business? A. 18 Warren St., New York.

Q. Do you operate under your own name? A. The Ostrander Electric Supply Co.

Q. What is your official position? A. Secretary and treasurer.

Q. As such, do you have anything to do with the purchase of materials? A. I do most of the purchasing.

1943 Q. What territory do you cover in your business? A. Metropolitan District, about 50 miles from New York City.

Q. How many salesmen do you travel? A. Five.

Q. What class of trade do you call on? A. Contractor dealers and some plant trade.

Q. How long has the Ostrander Electric Co. been in that business? A. Five years.

Q. During that period of time, have you had any business dealings with the Arrow Electric Co.? A. Yes, we have.

Q. And when did you first have business dealings with that concern? A. When we started business.

1944 Q. You started out as an Arrow jobber? A. Yes.

Q. Who solicited your business in the beginning? A. I don't know—generally had our dealings with Mr. Deacon. I don't know who the salesman was at that time.

Q. Have you continued to handle the Arrow line since starting? A. Yes, I have.

Q. About what percentage of your sales would you say consist of Arrow products?

Mr. Gross: In the wiring devices?

Mr. Haycraft: Yes.

A. About 90 percent, I would say.

Q. Has Mr. Deacon continued to do the soliciting? A. He comes in sometimes, and they have their salesmen, and they come in.

Q. Do you remember any others? A. Webster and Durant. There is another salesman coming in now, but I don't know his name.

Q. I show you Commission's Exhibit 88, and ask if you recognize that as an Arrow catalogue of the Arrow Division? A. It is a catalogue. I don't know if it is the last one.

Q. No, that is one along about 1926 or 1927. A. Yes, that is a catalogue.

1946

Q. At the time you first began buying from Arrow Electric Co., it was not affiliated with any organization? A. Not that I know of.

Q. Do you know whether or not it later became affiliated with any other organization? A. I understand about Hart & Hegeman. I don't know about any one else.

Q. Do you remember when you first learned that? A. I should say a year and a half or two years ago.

Q. I show you Commission's Exhibit 18, and ask if you recall receiving that letter? A. I don't recall the letter. I know we had some kind of word from them. I don't recall that letter.

1947

Q. About how long ago? A. In 1927; about that time, yes.

Q. I show you Commission's Exhibit 81, and ask if you recognize that as the present catalogue of the Arrow Division of the Arrow-Hart & Hegeman Electric Co.? A. Yes, that is the latest I have seen.

Q. How long have you known that the Arrow Electric Co. was a division of the Arrow-Hart & Hegeman Electric Co.? A. I would say about two years.

Q. During that period of time, since 1927, when you were handling this Arrow line, did salesmen of

1948 the Hart & Hegeman Manufacturing Co. call on you soliciting your business? A. No.

Q. Have you any call for Hart & Hegeman products? A. Yes, we do.

Q. How do you obtain your products? A. At the present time we get them from the Arrow Co.

Q. That is, you place your order with the Arrow salesman? A. Yes.

Q. Back in 1927, how would you obtain them? A. I generally purchased them through other jobbers who handled the Hart & Hegeman line.

1949 Q. Are you acquainted with any other jobbers in the metropolitan district that were handling the Arrow line back in 1926 and 1927? A. I know some are handling it today. I don't know if they had at that time or not.

Q. Who is that? A. Tidewater Electric Co., Joseph Kurzon. I don't recall any others. I think Crannell, Nugent & Kranzer, but I am not sure. The Hirschfeld Electric Supply Co.

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

1950 Q. When you said that in 1927, when you had H. & H. goods called for, you could get them from other jobbers, and you got them from other jobbers. That remained true during 1928 also, didn't it? A. Well, we could get it from Arrow.

Q. You could buy them from the Arrow-Hart & Hegeman Electric Co.,—the full name? A. Yes.

Q. In other words, you always got your Hart & Hegeman supplies from another jobber until this new company was formed? A. Yes. Just odd lots that we would pick up.

Q. When you were carrying, in these five years,—what other lines have you carried besides Arrow? A. Pass & Seymour. We have only had that about two years.

Q. Back of that principally Arrow? A. Just the Arrow.

Q. Was it your policy to carry one line only? A. It seemed to fill all the demands of our customers.

Q. It was your own decision to carry one line? A. Yes.

Q. It wasn't required by the Arrow Company? 1952
A. No.

Q. You were never restricted in the number of lines you might carry? A. No.

Q. It was sufficient for your purposes in the trade? A. Yes.

Mr. Gross: That is all.

Mr. Haycraft: That is all.

HARRY J. HORNUNG, was thereupon called as a witness, and being first duly sworn, testified as follows: 1953

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you state your name? A. Harry J. Hornung.

Q. State your occupation, Mr. Hornung. A. Vice-president and manager, Monroe Lamp & Equipment Corporation.

Q. Where is its place of business? A. 314 W. 14th St.

Q. New York City? A. New York City.

1954 *Harry J. Hornung—Direct.*

Q. In what business is it engaged? A. Electrical wiring devices, supplies, and Mazda lamps.

Q. Are you a jobber of those supplies? A. Yes.

Q. What territory do you cover? A. The metropolitan district, mainly.

Q. How many salesmen do you travel? A. Four.

Q. How long has that firm been in that business? A. About ten years.

Q. During that period of time, has your firm had any business dealings either with the Arrow Electric Co. or the Hart & Hegeman Manufacturing
1955 Co.? A. Both.

Q. Which one did you start with? A. Arrow Electric, before I got there.

Q. Were they handling both lines? A. No, just the one.

Q. Have they continued handling the Arrow lines since then? A. Yes.

Q. Has that line increased or decreased since you have been with that firm?

Mr. Gross: Which line?

Mr. Haycraft: Arrow.

1956 A. I believe it has been on a par, but we have been handling that mainly.

Q. To what class of trade do you sell? A. Mainly isolated plants and a few contractors.

Q. Would it refresh your recollection if I should say that in 1926 your purchases of Arrow products were between $8,000 and $9,000; in 1927 about $5,000; in 1928 about $2,500; in 1929 about $2,000, and in 1930 about $1,200? A. That is due to business conditions, and we didn't take every order unless it can show a profit, on account of competition.

Q. Because of other jobbers? A. Yes, such as on sockets, receptacles and switches.

Q. Who solicited your business since 1927 for the Arrow? A. Durant.

Q. How long did he continue to solicit your business? A. Since about two years ago.

Q. Who has been since? A. Mr. Springett.

Q. Does he still solicit for the Arrow? A. Yes, sir.

Q. About how often does he call? A. Possibly every two or three weeks.

Q. When did you start handling the Hart & Hegeman line? A. I don't just recall. Possibly four or five years ago.

1958

Q. Who solicited your business for the Hart & Hegeman? A. Mr. Wilson.

Q. Did he continue to solicit since that time? A. Yes, and Mr. Stone.

Q. And for how long? A. Mr. Wilson I think until he died. He made periodic calls, and Stone up until about a year and a half or so ago.

Q. Who succeeded Mr. Stone? A. Mr. Webster.

Q. Mr. Webster has continued to solicit from that time? A. Yes.

Q. Have your purchases of Hart & Hegeman products since 1927 increased or decreased? A. Decreased.

1959

Q. What has caused that? A. On account of competition. That is so keen, that we don't take any business unless we can show a reasonable profit. The profit has been about one-half to two per cent.

Q. Was that true in 1928 and 1929? A. No, I don't think it was quite that, although there was a condition there—one salesman had contact with several of the big contractors, and on account of his connections he got some business.

Q. One of your salesmen, did you say? A. Yes.

Q. Did he resign or— A. He resigned.

1960 Q. And you lost his contacts? A. Yes.

Q. Are you acquainted with Mr. Deacon? A. Yes.

Q. When did you first meet him? A. I met him before I came with the present company; a number of years ago.

Q. And with what company was he associated at that time? A. Arrow Electric.

Q. Has he continued to be with that concern since? A. Yes.

Q. Do you know what his position is now? A. I believe he is general sales manager.

1961 Q. Of what organization? A. Of the Arrow-Hart & Hegeman Electric Co.

Q. Here in New York? A. In New York, yes, sir.

Q. Do you identify Commission's Exhibit 88 as an Arrow catalogue back in 1926 and 1927? A. Yes, sir.

Q. And Exhibit 81 as its most recent catalogue, issued in November, 1929? A. Yes, sir.

Q. I notice that in this last catalogue, it is designated as the Arrow Division of the Arrow-Hart & Hegeman Electric Co. How long have you known that to be true? A. About a year and a half or two years.

1962 Q. How did it first come to your attention? A. I don't recall whether it came through the salesmen or not.

Q. I show you Commission's Exhibit 67 and ask you if you identify that as a Hart & Hegeman Manufacturing Co. catalogue back in 1926 and 1927? A. Yes.

Q. I show your Commission's Exhibit No. 82 and ask if you recognize that as a recent catalogue of the Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Co.? A. Yes.

Q. Your knowledge as to the Hart & Hegeman connection with the Arrow-Hart & Hegeman Elec-

tric Co. is at the same time so far as the Arrow is concerned. In other words, it came to your attention about a year and a half or two years ago? A. About the same time. We have both catalogues, and we send out both catalogues to our customers.

Q. Comparing the products handled at the present time, what would you say about them as to—are the products in these catalogues similar?

Mr. Gross: The two divisions?

Mr. Haycraft: Yes.

A. The two divisions are practically the same. 1964

Q. Was that true in 1927? A. No.

Q. What is the difference? A. The Arrow catalogue had various items that the other folks did not have, on account of their progressiveness.

Q. They would bring out a new item as a pioneer? A. Yes.

Q. At the present time, have you noticed whether or not the two divisions of the Arrow-Hart & Hegeman Electric Co. would bring out new items at the same time? A. I didn't pay any close attention to that.

Q. Of course, the catalogues will speak for themselves on that. I believe you said that Mr. Deacon 1965 took Mr. Wilson's place. A. As far as I know, yes.

Q. And he is now in charge of the sales forces of both divisions? A. As far as I know, yes.

Mr. Haycraft: That is all.

CROSS EXAMINATION BY MR. GROSS:

Q. This electric lamp business, is that your principal line? A. Yes.

Q. This wiring device line is more or less incidental to your main business, the lamps? A. Yes, sir, a secondary product.

Q. When Mr. Webster called on you, it was always as a Hart & Hegeman salesman? A. Yes.

Q. In 1926, 1927 and 1928, you were buying from both companies, were you? A. I don't just recall how far back it was we started with Hart & Hegeman.

Q. You were buying from Hart & Hegeman and the Arrow? A. Yes, sir.

1967 Q. At that time, were the two sales organizations competing with each other for the goods that they might sell to you? A. Yes.

Q. Did that same competition—

Mr. Haycraft: Just a moment. I move to strike out the question and answer, as a conclusion.

Mr. Gross: If you will read the question, you will see that there is no conclusion here at all.

(The last question was repeated.)

Mr. Gross: There I am asking whether two people were competing for the goods.

1968 Examiner Reeves: Wouldn't it be better for you to ask him if they were striving to obtain the same trade?

Mr. Gross: Strike out the question.

Q. In 1926 and 1927, was the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co. striving through the different salesmen to obtain your trade on the same general electrical wiring device line? A. Yes.

Q. Did different salesmen for those two companies try to sell you the same lines? A. Yes.

1969

Q. Did those same conditions continue in 1927 and 1928? A. Yes.

Q. Since the organization of this new Arrow-Hart & Hegeman Electric Co., do you still have two sets of salesmen calling upon you? A. Yes.

Q. Are those two salesmen still striving for their respective divisions to sell you substantially the same line of goods? A. Yes, sir.

Q. What determines which particular line of goods, whether the Arrow goods or the Hart & Hegeman goods? A. We started with the Arrow Company, and we used that as our leader, but the H. & H. we sell on demand.

1970

Q. In other words, the trade requires H. & H. from you? A. Yes.

Mr. Gross: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. What inducements were offered by those respective sales forces in 1926 and 1927 when they solicited your business? A. The demand amongst the trade, among the general contractors and architects.

1971

Q. Did either the Arrow man or the Hart & Hegeman man give you any inducement as to price or service? A. No inducement as to price.

Q. Did they both make solicitation of your customers; that is, the contractor? A. As far as I know, yes.

Q. At the present time, what is the inducement that is offered by the respective salesmen? A. No inducement.

Q. Is there any difference in the articles? A. No difference in the articles as far as I know.

1972 *Harry J. Hornung—Redirect.*

Q. Where is the striving, then? A. The demand on the outside, from the general public, the general contractor.

Q. Does the Arrow sales force push the Arrow line with the contractors as they did before? A. As far as I know, they do.

Q. Is that the only reason that you would account for the decreased sales, the competition on the outside? A. The competition on the outside, and we won't take any business unless we see a reasonable profit.

1973 Q. Do you know that Mr. Webster is under the same sales manager as Mr. Springett? A. As far as I know.

Q. And both the Arrow and Hart & Hegeman lines are now divisions of a common owner? A. I don't know about the common owner.

Q. In other words, the Arrow-Hart & Hegeman Electric Co. owns and operates both divisions? A. Well, from their literature, I take it.

Q. Is there any difference, then, so far as the product and so far as the demand is concerned between the two lines? A. Business conditions would be the factor in that.

1974 Q. In other words, what is done by the salesmen to induce you to buy a Hart & Hegeman article or an Arrow article? A. The demand and the general specifications in the general contract.

Q. How is that obtained? A. The electrical contractor gets it from us on specification, due possibly to the missionary work by the various manufacturers, having their products specified in their specifications.

Q. In other words, the amount of business that you will give to one division, compared with the other, will depend on the amount of business that comes to you from the contractors? A. Yes.

1975

Q. Do you have any salesmen who are pushing either of the lines? A. No, sir; they are pushing lamps mainly.

Q. Then, so far as you are concerned, all that striving that you mentioned awhile ago, is with respect to your customers, and not with respect to you, yourself? A. That is correct.

Q. Is there any advantage to you whether or not you sell an Arrow article or a Hart & Hegeman article? A. No advantage.

BY MR. GROSS:

1976

Q. Both salesmen do strive to sell you goods to stock your store? A. Yes.

Q. In other words, the Arrow Division tries to sell you Arrow supplies for your shelves, and the H. & H. salesman still tries to sell you H. & H. devices for your stock? A. Yes.

BY MR. HAYCRAFT:

Q. Now, when you say he tries as hard, what inducement does he offer? A. He tries to show us where an account of demand amongst the people he covers that we ought to carry that particular 1977
stock.

Q. Does he offer any price inducement? A. No.

Q. Any service inducement? A. No, sir.

Q. Any credit inducement? A. No, sir.

BY MR. GROSS:

Q. In other words, the only inducement, as you state in your original answer, as the inducement that would keep one or the other, would be the

amount of business that you would get from a contractor? A. The business we get would determine.

Q. The same is true with respect to Pass & Seymour and Bryant? A. We don't have Bryant. We have Pass & Seymour.

Q. And the same is true with Pass & Seymour? A. Yes.

Mr. Gross: That is all.

Examiner Reeves: The hearing will be adjourned to 3 p. m.

1979 (Whereupon, at 1:10 p. m., the hearing was adjourned to 3 p. m., daylight saving time.)

AFTER ADJOURNMENT.

3 P. M. daylight saving time.

WILLIAM SMART, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

1980

Q. Will you state your name? A. William Smart.

Q. Where do you live, Mr. Smart? A. 1183 Clay Ave., Bronx.

Q. What is your occupation? A. President and treasurer, Smart Electric Supply Co.

Q. Where does it have its place of business? A. 567 Cortlandt Ave., Bronx.

Q. In what business is that company engaged? A. Electrical supply business.

Q. Wholesalers? A. Wholesalers.

1981

Q. How long has it been so engaged? A. Since 1923.

Q. Where do you sell your goods? A. Throughout the Bronx and the lower part of Westchester County.

Q. Do you travel salesmen? A. One now; generally two.

Q. What class of trade do you generally sell to? A. We sell to contractor dealers, industrials, and landlords.

Q. During that period of time, have you had any business dealings with the Hart & Hegeman Manufacturing Co.? A. Yes, I have.

1982

Q. Since when? A. Why, in the latter part of 1923 or the early part of 1924. I don't just recall.

Q. About what percentage of your business would you say was done with the Hart & Hegeman Manufacturing Co.? A. The total business?

Q. The electrical wiring devices? A. 5 per cent.

Q. Of your electrical wiring devices? A. 5 to 10 per cent.

Q. What other lines do you handle? A. We have cable.

Q. I think you misunderstood my question. Of your electrical wiring device business, what percentage would you say was Hart & Hegeman, of the products? A. I see what you mean. I don't know. We have so many different lines. I couldn't tell you the exact percentage. Maybe 2 per cent.

1983

(Discussion off the record.)

If I may ask you a question: you mean the total amount of my electrical business?

Q. No. I will ask you to identify this catalogue, Exhibit No. 67. Look through there and see if

you handle the full line of those devices. A. I should say about 50 per cent of the H. & H. devices we use at times.

Q. Do you handle any other line of wiring devices similar to that? A. None, only in the cheaper grade.

Q. What is that; what manufacture? A. Well, we handle Leviton.

Q. When you first started to handle the Hart & Hegeman line of electrical wiring devices, who called on you to solicit your business? A. Mr.
1985 Wilson.

Q. And how long did he continue to? A. Until he died: I think a year or two ago. I don't recall exactly.

Q. Who succeeded him? A. Also a party by the name of Moses called on me in conjunction with Mr. Wilson, and since then a party by the name of Webster.

Q. Has Mr. Deacon ever called on you? A. Mr. Deacon called on me once or twice.

Q. In the past year? A. The last time was a few weeks ago, I believe.

Q. I ask you if you can identify Exhibit 82 as
1986 a recent catalogue of the Hart & Hegeman Co. A. We don't get that catalogue now. We get loose leafs. We had that two years ago.

Q. You get leafs for your own catalogue? A. No. They have a loose leaf sheet that they send us when they get a change of prices.

Q. This catalogue is gotten out by the Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Co. How long have you received advertising matter with that name at the bottom of it? A. I couldn't say. It must have been—I couldn't

say. I never paid any particular attention to the inside of the catalogue. I always took the initials "H. & H."

Q. Do you know who owns the Hart & Hegeman line at the present time? A. No, I don't.

Q. Did you ever hear of the Arrow-Hart & Hegeman Electric Co.? A. I have heard of the Arrow Co.

Q. Did you ever hear of the Arrow-Hart & Hegeman Electric Co.? A. Yes, I have heard of them.

Q. I show you Commission's Exhibit No. 18, and ask if you recall receiving the original of that copy, addressed to the H. & H. distributors? A. I believe we have. I will say yes. 1988

Q. Was that the first time that you learned that there was some affiliation between the Arrow Electric Co. and the Hart & Hageman Manufacturing Co.? A. The first time.

Q. Has the Hart & Hegeman Manufacturing Co. given you any service in assisting you in securing business from your customers? A. They have.

Q. In what way? A. Well, one of their men called on me, and in conjunction with that he called on the contractor dealer. If he had any business, he places the order through me, if I am in that territory. 1989

Q. Have they been quite active along that line? A. They have to lately, but I think the depression has done that.

Q. Is it the same man or another man that does that? A. The same man.

Q. About what percentage of your business was obtained in that way, as distinguished from your own solicitation? A. Very small. I can't tell you the exact percentage.

1990 *William Smart—Cross.*

Q. During this period of time, has any representative of the Arrow Electric Co. called on you to solicit your business? A. Not that I know of.

Q. Are you acquainted with any salesmen of the Arrow Electric Co.? A. No, I am not.

Q. Are you acquainted with the Arrow Electric products? A. Yes, I think I am, very faint, though. I never handled the line, outside of being on the market.

Q. At the present time, is there a distributor handling the Arrow Electric products in your ter-
1991 ritory? A. I don't believe so. If there are, it is Hubbell. I think they were originally. Whether they are today, I don't know.

Q. Are you familiar enough with the Arrow line to say whether or not it is similar or different than the H. & H. line? A. I don't know, but I can explain that when we went and got the H. & H. line, I thought that the H. & H. line was a little bit better than the Arrow line, as far as quality is concerned, but that is all I can say. That is my personal opinion.

Q. Upon what do you base your opinion? A. Just from the earmarks; contractors prefer that
1992 line.

Q. Just your contact with the trade? A. Yes, that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. Have you carried the H. & H. line, Mr. Smart, virtually since you have started in business? A. Yes.

Q. You carry other lines of wiring devices? A. Not in competition.

1993

Q. But you carry cable, insulated wire, and lamps? A. Yes, sir.

Q. And boxes? A. Yes, sir.

Q. And the electrical wiring devices that you carry, goods of H. & H. and Leviton, are a comparatively small part of your business? A. Small part of the business.

Q. As I understand it, you took the H. & H. line because you found that you had a line of customers who wanted H. & H. goods? A. Exactly.

Q. And you carry a considerable line of H. & H. goods because there is that demand in the trade for it? A. Yes, in that locality.

1994

Q. In that territory? A. Yes, sir.

Q. And the Leviton line is a distinctly cheaper line than any other in the trade? A. Well, it is so small, that it is really not worth while considering. It doesn't amount to $70 a month.

Q. During the period that you have had this line, since 1923 or 1924, has there been any change in the effort of the Hart & Hegeman to carry your trade as a customer and to distribute their line through your trade? A. I think it has continued exactly the same as when I started.

1995

Mr. Gross; That is all.

Mr. Haycraft: No further questions.

C. M. PARR, was thereupon called as a witness, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you state your name and residence? A. C. M. Parr, Montclair, N. J.

1996 *C. M. Parr—Direct.*

Q. What is your occupation? A. Wholesale electrical supply dealer.

Q. Under what name? A. Parr Electric Co., Inc.

Q. What is your position? A. President.

Q. In what business is that business engaged? A. Wholesale electrical supplies.

Q. Where does it have its place of business? A. 77 Warren St., New York City.

Q. What territory do you cover? A. The metropolitan district.

1997 Q. How many salesmen do you travel? A. 12.

Q. Included in your products, do you handle a line of wiring devices? A. Yes.

Q. Is it more than one line? A. Five lines.

Q. Will you name them? A. Hubbell, Arrow, Bryant, Cutler-Hammer, Pass & Seymour, Hart & Hegeman—six lines.

Q. How long have you been handling the Arrow line? A. About 11 years.

Q. How long have you been handling the Hart & Hegeman line? A. The same length of time.

Q. About the same time? A. Yes, sir.

1998 Mr. Gross: That is about the time that you have been in the business, isn't it?

The Witness: Yes, sir, started with both of them.

Q. At the time you started, which one did you handle the most, which was the largest line? A. Why, beginning we put in the stocks of all of those mentioned, except Cutler-Hammer. As each manufacturer recognized us, we placed a stock order for their line. We started to push the Hart & Hegeman line.

1999

Q. Why? A. We thought that it would have acceptance with our trade, and the local manager was very friendly to us.

Q. Who was the local manager? A. Wilson.

Q. What class of trade did you sell to principally? A. To industrial plants and electrical contractors.

Q. And what did Mr. Wilson do, if anything, to assist you in selling your products? A. He cooperated by calling on the customers and telling us the prospects, and creating a demand for our product with architects and engineers: he told them that we had the stock; stimulated our salesmen by supplying advertising and samples.

2000

Q. The Arrow people did not give you the same cooperation? A. They desired our business and solicited it, but at that time, why, we played more with the Hart & Hegeman Co.

Q. Was there any difference in the quality of the product? A. It is a matter of opinion. We preferred the Hart & Hegeman line at that time.

Q. Was there any difference in the demand in the trade that you solicited with respect to the two lines? A. The industrials were probably more acquainted with the H. & H. line in our territory.

2001

Q. Would that be due to the activities of the H. & H. organization? A. Yes, they were an older company, and their product had been on the market for a longer time at that time.

Q. Did you continue to stock the Arrow line after that time? A. Yes, we stocked all those lines.

Q. Did your salesmen push the H. & H. more than the Arrow? A. For a while.

Q. Then what happened? A. We felt that—while the local manager was cooperating, the head office was not very active, and we felt that some of the

2002 other manufacturers were more desirous of getting our business, so we began handling the Bryant line.

Q. About when was that? A. Well, I only guess; it was about 1921 or 1922.

Q. Then, how long did that situation hold good? A. Well, we found that the Bryant Co. was dominated by the Westinghouse interests, and the Westinghouse owned a lot of supply houses, and were competing with us, and we began to withdraw from the Bryant Co. and push the Hubbell line more, and around 1925 or 1926 the Arrow Company made
2003 very strong efforts to get our business, and they offered very good cooperation along export lines, and we did what we could to push the Arrow lines —the Arrow and the Hubbell, and then we continued.

Q. What was the result of your pushing of the Arrow line? A. We found that the Hubbel line had a little better acceptance with our salesmen and our customers than the Arrow—the particular class of trade that we had been appealing to—and we finally more or less continued with the Hubbell until we understood they had been bought by one of the large companies, and then we were rather discouraged,
2004 and the only independents that we could see were the Arrow people and the Hart & Hegeman people, so we started to do business with them.

Q. During 1927 to 1929, did you continue to push the Hart & Hegeman line? A. Why, after the new interests got into the Hart & Hegeman Co. we found they were very much more cooperative and very much more desirous for business, and the local man was always—

Q. Mr. Wilson? A. Yes, he was always cooperating with us, but the company was apathetic; they seemed to be more or less content to go along, but

2005

after the new interests came in, Mr. Wilson seemed to have a much more freer hand, and they supported him, and, in turn, he was able to give us more co-operation, and we started to do more business with the Hart & Hegeman line. I know Wilson was exulted at the support given him by the new people.

Q. Did he mention Mr. Grier as one of the men? A. Yes, he was the main one.

Q. About what time would that be? A. That would be the last two or three years.

Q. Two or three years before he died. How far back would you take that? A. I would say 1928, probably.

2006

Q. Who succeeded Mr. Wilson in charge of the Hart & Hegeman business here? A. The man we deal with is Mr. Stone. Mr. Everest calls on us from the factory. I don't know whether Mr. Stone succeeded Mr. Wilson, or whether they put anybody in the job.

Q. Do you know Mr. Deacon? A. Yes.

Q. How do you know him? What is his position? A. Mr. Deacon, I guess, has always called on us for the Arrow Electric Co.

Q. Does he hold any position now, as far as you know, with respect to the Hart & Hegeman line?

2007

A. Of course, I know he is Mr. Stone's senior, and he was the manager in New York for Arrow, and I suppose Mr. Stone would look up to him.

Q. In other words, he is in charge of both divisions at the present time? A. I suppose so.

Q. How long have you known the Hart & Hegeman line to be put out by the Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Co.? A. Well, I imagine about 1928, if I understand you correctly.

2008 *C. M. Parr—Direct.*

Q. Yes. I show you "Commission's Exhibit No. 88," and ask you if you recognize it as a catalogue of the old Arrow Electric Company before being affiliated with the Hart & Hegeman Co.? A. Yes.

Q. Do you recognize that catalogue of the old company? A. Yes.

Q. I show you "Commission's Exhibit No. 67," and ask you if you identify that as a catalogue of the old H. & H. line, the Hart & Hegeman Manufacturing Co.? A. It is the H. & H. line. I don't know whether it is old or new.

2009 Q. From your knowledge of the two lines, would you say that they were similar or practically the same devices, or otherwise? A. In our catalogues we have four or five different lines of wiring devices that I mentioned, and they are all identical in our books. I mean, you could scramble up those, Hubbell, and the others, and I couldn't tell them apart, unless you had the trade-mark on them. All the catalogues are alike.

Q. I show you "Commission's Exhibit No. 81," and ask if you recognize that as a late issue of a catalogue of the Arrow Division of the Hart & Hegeman Electric Co.? A. Yes.

2010 Q. I show you "Commission's Exhibit No. 82," and ask if you identify that as a recent catalogue of the Hart & Hegeman Division of the same company? A. Yes, sir.

Q. And do you catalogue both lines now? A. I think we do now, but our present catalogue was printed several years ago.

Q. Have you observed any recent devices gotten out with both names on it, Arrow and H. & H.? A. No, sir.

2011

Q. About what percentage of your total wiring device business is given to Hart & Hegeman products?

Mr. Gross: Now?

Mr. Haycraft: Yes, now.

A. Hart & Hegeman, I should say that it was possibly 25 per cent—that is a guess purely.

Q. Is that more or less than you did in 1927, would you say? A. More.

Q. More? A. Yes, sir.

Q. Now, the same with respect to the Arrow? 2012
A. I think that Arrow business has dropped off since 1927.

Q. Substantially? A. No, I should say probably half as much.

Q. To refresh your recollection, if I should tell you that you purchased, in 1927, approximately $5,000 worth of Arrow products, and $53 worth in 1930, would that refresh your recollection? A. I would say that was not right, off-hand.

(Discussion off the record.)

BY MR. GROSS:

2013

Q. You have four branches? A. Yes, and then there is another company, the export corporation.

BY MR. HAYCRAFT:

Q. Is it due to the fact that you have four branches—you would think your sales would run half as much in 1930 as in 1927 of Arrow products? A. No, we had those in 1927.

2014

BY MR. GROSS:

Q. The total business in the four branches then and now; it is half now? A. Yes.

BY MR. HAYCRAFT:

Q. Where are your other branches located? A. Brooklyn, Jersey City and Newark.

(Discussion off the record.)

2015 Q. If I would say it ran about $10,000 in 1927 and less than $1,000 in 1930, what would you say? A. There must be something wrong. We did more than $1,000 in 1930.

Mr. Gross: That is on Arrow?
Mr. Haycraft: Yes.

Q. I am referring, of course, to domestic sales in the New York, Newark and Jersey City offices. A. That might be.

Q. That would not include your export business? A. No.

2016

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. GROSS:

Q. Mr. Parr, as long as Mr. Wilson lived, is it a fact that Mr. Wilson's organization, and Mr. Deacon's organization for Arrow, were both actively soliciting all the business that they could get from you? A. Yes, sir, they were very competitive. That is, Mr. Wilson was doing everything he could, from what he told me, to exceed Mr. Deacon in sales.

Deacon was frequently down trying to get our business. They were very competitive; no question about it. 2017

Q. And the two separate divisions since then, have they continued to actively solicit business in the same way? A. Yes, to the best of my knowledge and belief.

Q. The volume of your purchases from the different six or seven manufacturers that you carry from time to time—whether or not that is largely regulated by the demand in the trade to which you sell for the different brands of the different companies. A. Why, not entirely. It is partly a question of demand and partly a question of cooperation that the individual companies give us. 2018

Q. But it is a matter of rivalry, of soliciting business and furnishing you service which regulates that demand, isn't it? A. You mean the demand on us?

Q. Demand on you. A. Yes, there is some degree where we are able to divert that business.

Q. And there is, on the other hand, a certain demand for an H. & H. article or an Arrow article or a P. & S. article? A. Yes, sir.

Mr. Gross: That is all. 2019

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. When you say that both of these organizations, of the Arrow and the Hart & Hegeman, solicited your business strenuously, can you say what inducements were offered by the respective sales organizations to get your business? For instance, what did Mr. Wilson and his men and what did Mr. Deacon and his men do in order to get you to stock

2020 and sell their products? A. Well, they would at times tell the ultimate buyer that we had the goods in stock; and attempt to favor us with orders by suggesting our name to the buyers, or they would tell us that such-and-such account was interested in their line, and we should go after the business, and at times they would bring orders to be billed through us, or if they got orders by mail, they would write to the person ordering that they would be billed by us as their distributors, and they tried to increase our distribution of their products and,
2021 in turn, we tried to give them stock orders.

Q. From the sales that were made, is it fair to assume that the Hart & Hegeman organization gave you most cooperation along that line? A. I should say so, yes.

Q. Now, since Mr. Wilson has died, I understand that Mr. Stone calls on you from the Hart & Hegeman organization? A. Yes.

Q. Who represents the Arrow organization? A. I don't know his name. Mr. Deacon drops down occasionally, and there is a man who comes in. I personally don't know him, but I made inquiry yesterday, and I was told that there was a man that
2022 came in regularly from Arrow.

Q. Do your salesmen that you employ make any solicitation of this type of business? A. Yes.

Q. What lines are they pushing? A. Why, at the present time we are advertising in our house organ H. & H. and Hubbell, and we have advertised the Arrow.

Q. How long ago? A. Last two or three months.

Q. How long before that, continuously or just periodically? A. Sporadically.

Q. You have continued to advertise the H. & H. line, or has that been sporadic? A. Why, after—

2023

we did at intervals. In other words, we would do it and then drop it, and then take it up again. At the present time we are advertising H. & H. and Hubbell.

Q. How long has that been true? A. Since Mr. Wilson has been given a free hand in this territory. Cutler-Hammer and Hubbell last summer, and we haven't pushed H. & H. more aggressively than Hubbell.

Q. Before that time, up to a year ago, did you advertise both H. & H. and Hubbell? A. I am inclined to think so.

2024

Q. And your salesmen, did they push both lines in calling on the trade? A. Yes.

Q. They didn't push the Arrow line? A. Some of the men did; some of the houses had a preference, and some of our men pushed Arrow if the Arrow salesman worked with the man. It is particularly an individual matter, you know; Arrow has been trying to get business right along.

Q. Is there any difference in the trade that the Arrow line—is it in more demand than the H. & H. line, or vice versa? A. I should say that the industrial trade and the plant trade probably are more familiar with the H. & H. line than with the Arrow line.

2025

Mr. Haycraft: That is all.

Mr. Gross: That is all. Thank you.

(Discussion off the record.)

Mr. Haycraft: This concludes the taking of testimony in New York City at this time. I should like very much to have an adjournment sine die, to give me a chance to go over the record and to consult with Mr. Gross and with my chief, and so on, to determine if and when

2026 further testimony will be taken before the Commission.

Examiner Reeves: The hearing will stand adjourned, and may be re-convened upon five days' notice to counsel for respondent and counsel for Commission.

(There was discussion off the record.)

Mr. Gross: I will waive the five days' notice, and I think I can agree with Mr. Haycraft on two days' notice, by either telegraph or otherwise, of the suitable hour, time and place.

Examiner Reeves: The adjournment will be taken, then, with this understanding, and it is

2027 so ordered.

(Whereupon, at 4.10 p. m., daylight saving time, the hearing in the above-entitled matter adjourned sine die.)

2028

Conference Room, Arrow-Hart & Hegeman Electric Company, 103 Hawthorne Street, Hartford, Connecticut. 2029

June 17, 1931.

Met pursuant to adjournment, 10 A. M. Daylight Saving Time.

Before—WILLIAM C. REEVES, *Examiner*.

APPEARANCES:

E. H. HAYCRAFT, Attorney for the Federal Trade Commission.

2030

CHARLES WELLES GROSS and WALLACE W. BROWN, of Gross, Hyde and Williams, 49 Pearl Street, Hartford, Connecticut, Attorneys for respondent.

PROCEEDINGS:

Examiner Reeves: We will proceed in the matter of Arrow-Hart & Hegeman, Inc., and others, Docket 1498, pursuant to adjournment taken on June 5, 1931, at New York, N. Y.

Let the record show that Mr. Grier is recalled for further examination. 2031

2032 *Edward R. Grier—Recalled—Direct.*

EDWARD R. GRIER, was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Mr. Grier, you are the same Mr. Grier who has testified heretofore in this proceeding? A. Yes.

Q. You are the president of the respondent The Arrow-Hart & Hegeman Electric Company? A. Yes.

Q. The new respondent? A. Yes.

2033 Q. I call your attention to Commission's Exhibit 18, page 2, which purports to be a form letter which you wrote to Arrow distributors on August 25, 1927, as vice-president of the Arrow Electric Company, and which you identified when you were on the stand before. I call your attention to the fifth paragraph of this letter, and this sentence: "In pursuance of this plan, it will not be practicable for us to furnish H. & H. material to our distributors, and naturally the reverse is true, that Arrow material will be available only to Arrow distributors." Will you explain that sentence? A. After the holding company was formed there was abso-

2034 lutely no change in policy. Before the holding company was formed, it was impossible for the Hart & Hegeman Manufacturing Company to obtain Arrow goods to sell them to the Hart & Hegeman distributors. It was also impossible for the Arrow Electric Company to obtain goods of the Hart & Hegeman Manufacturing Company to sell them to Arrow distributors. This policy was continued after the holding company was formed.

Q. If I understand your answer correctly, then, prior to the formation of the holding company, that

2035

is, prior to October, 1927, a jobber who was buying principally Arrow goods did not stock Hart & Hegeman products, was not able to buy Hart & Hegeman products from the Arrow Electric Company? A. They were not.

(Discussion off the record.)

Q. Likewise, a Hart & Hegeman distributor, and that is a distributor who handled principally Hart & Hegeman products, was not able to buy Arrow products from the Hart & Hegeman Manufacturing Company? A. No.

2036

Q. Your letter, there, where you say, "In pursuance of this plan it will not be practicable for us to furnish H. & H. material to our distributors, and naturally the reverse is true, that Arrow material will be available only to Arrow distributors"; what was the purpose of advising your trade to that effect? A. So that they would have a clear understanding of the situation. There was no change in policy whatsoever before or after.

Q. Did you have any request from your Arrow distributors, that is, from your customers, to furnish them H. & H. products during that 15 months' period, from October, 1927, to January, 1929? A. I don't remember any request, but I am certain that if they had the privilege, they would have taken advantage of it.

2037

Q. Why? A. On account of the policy not being changed. They could not get—Arrow distributors could not get Hart & Hegeman goods, and they thought, perhaps, that after the formation that they could, and we promptly sent out the letter notifying them that they could not. There was no change in the selling policy whatsoever.

2038 Q. Do you have any personal recollection of an Arrow jobber getting H. & H. products from the Arrow Electric Company? A. I have no personal recollection. That would not come to me, perhaps.

Q. Who in your organization would know that? Mr. Pond? A. I don't know. We set the policy before the questions came in.

Q. I am trying to find out whether you got questions.

(Discussion off the record.)

2039 Q. To your knowledge, did your firm have a more liberal policy than the Hart & Hegeman in the selection of their jobber customers at that time? A. Credit wise?

Q. Credit wise or maintenance of price at which they would sell in the trade? A. That is a very difficult question to answer, because you have to look at it from different angles.

Q. There is some testimony to that effect in the record, and we have your statement on it. A. The question—

(Discussion off the record.)

2040 (The last three questions and answers were read by the reporter.)

Mr. Gross: I object to the question on the ground that there is no question that came into the record that we select our jobbers on the basis of maintenance of price to the jobbers.

Mr. Haycraft: There is a statement by a witness to that effect.

(Discussion off the record.)

Mr. Haycraft: I withdraw the question.

2041

Q. When the Arrow Electric Company first entered the jobbing field with their line of electrical wiring devices, did you have any difficulty in securing jobber outlet? A. No, no more than any other new concern going into the field.

Q. Well, I don't like that answer. It is not responsive.

(The last question was repeated by the reporter.)

2042

A. Naturally, being a new concern, a great many outlets were more or less affiliated with other manufacturing concerns, and we did not have difficulty, but we had to take what we could take.

Q. Jobbers who were not already lined up, you might say, with some other manufacturer? A. Not altogether, but we had to take jobbers who were doing business, buying business, from other people, as we are doing today.

Q. Did you have any policy with respect to the insistence on your jobbing customers as to maintaining their retail price? A. None. We never had that policy under any conditions.

2043

Q. As compared with the price that you quoted to your jobber customers, how were they expected to sell to their trade? A. Exactly as their commercial reasons dictated. Will you read that question, please.

(The last question was read by the reporter.)

A. (Continuing) That was entirely up to their discretion.

Q. Did you suggest any price at all? A. That question I can't remember at that time.

2044 *Edward R. Grier—Recalled—Direct.*

Q. If you know, how did your prices to the jobbers compare with the prices of similar articles of your competing manufacturers?

Mr. Gross: In what time?

Q. (Continuing) 1927. Prior to the formation of the holding company, the old respondent. A. A number of the so-called high-grade manufacturers—their published prices were practically the same as our published prices. Probably 75 other manufacturers had very much lower prices than we did.

2045 Q. Were they listed in catalogues, similar to yours, these 75 others that you refer to? A. Some were and some were not.

Q. Were they full-line manufacturers or manufacturers of specialties? A. Some were and some were not.

Q. How many of these 75 that you mentioned, would compare favorably with your own concern in volume of outlet? A. Probably none.

Q. Did you make any serious attempt to meet their competition in price? A. To meet market conditions, which continually meant lower prices, in order to protect our company.

2046 Q. Did you have any policy in respect to selling to a jobber who had a tendency to cut prices, as it is known in the trade? A. We had no policy.

Q. Did you ever cut anyone off or refuse to sell a jobber who was known as a price-disturber?

Mr. Gross: I object to the question on the ground that we are going into another feature of the question, the question of resale prices, which involves another section of the Clayton Act, and I understood from my learned friend

that there is no question of unfair prices involved in this complaint.

Examiner Reeves: What is the contention of counsel for the Commission in respect to this question?

Mr. Haycraft: I am trying to find out if there was any basis in fact at all for the testimony of the witness that I called attention to, on the ground that such testimony would be relevant with reference to competition with respect to the sale of their products to jobbers who were known as price-cutters in the industry. 2048

Mr. Gross: I would like to state on the record that the testimony of the witness, Mr. McCabe, to whom counsel for the Commission refers, cannot be read as indicating that there would be any concession by the manufacturer to the jobber. It was a question of the jobber selling the goods at a price to his trade which this Mr. McCabe said he would not want to meet. You agree that that is what the phrase means?

Mr. Haycraft: Yes.

Mr. Gross: That has nothing to do with the policy of the Arrow Electric Company. 2049

Mr. Haycraft: Oh, yes, it does.

Examiner Reeves: I wish counsel for the Commission would state again his contention with reference to the materiality of that.

(The reporter read back Mr. Haycraft's statement.)

Examiner Reeves: The objection will be overruled. The witness may answer.

2050 *Samuel P. Williams—Direct.*

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: Yes, sir.

(The last question was read by the reporter.)

A. I don't remember anything like that being brought up to us. That wasn't our policy.

Q. Is it a true statement to conclude this from the testimony you have given, that prior to 1927 since the time you began business, that you sold
2051 to any jobber who would handle your goods regardless of his selling policy? A. We had nothing to do with his selling policy. After we sold him the goods we were through with him.

Mr. Haycraft: I think that will be all, of Mr. Grier.

Examiner Reeves: Have you any cross examination?

Mr. Gross: No, sir, no cross examination.

Examiner Reeves: Let the record show that Mr. Williams is recalled for further examination, having been previously sworn.

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SAMUEL P. WILLIAMS, was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Mr. Williams, I show you page 3 of Commission's Exhibit 18, which purports to be a form letter which you dictated or wrote to the distributors

of Hart & Hegeman Manufacturing Company on August 20, 1927, or about that date, and which you identified when you were previously on the witness stand. I call your attention to the fifth paragraph reading, "In pursuance of this plan, it will not be practicable for us to furnish Arrow material to our distributors, and naturally the reverse will be true, that H. & H. material will be available only to Hart & Hegeman distributors." Do you recall the significance of that statement at that time? A. That statement simply emphasized the fact that there was no change contemplated at all in the 2054
policy of the company which had always prevailed.

Q. That is, that the Hart & Hegeman Manufacturing Company was not selling Arrow products? A. Yes.

Q. In the future, so far as the policy of the Hart & Hegeman Manufacturing Company was concerned, they would have to look to the Arrow Electric Company for Arrow products? A. Yes, sir.

Q. Why did you deem it necessary to make that statement to the trade? A. I imagine that when the trade learned of the formation of the holding company, that they might feel that they could obtain the products of either manufacturer from 2055
either manufacturer. That would be a natural conclusion.

Q. I believe you testified when you were on the witness stand before that you and Mr. Grier took this up and decided to inform the trade in this respect? A. Undoubtedly we did.

Q. The exhibit itself indicates that Mr. Grier brought this to your attention and suggested that you write this to the distributors. A. Yes.

Q. Did the Hart & Hegeman Manufacturing Company have any policy with respect to the class

of jobbers they would sell to in 1927? A. Only that we were endeavoring to select jobbers in each territory who would be most advantageous to us from every standpoint.

Q. In determining that question, whether they would be advantageous to you from every standpoint, did you take into consideration the question of whether or not they were price-cutters or price-disturbers in that territory? A. The selection of jobbers was left almost exclusively to the judgment of our local district managers. Whether that point entered into their considerations, I don't know.

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Q. Did you ever discuss it with them? A. Not to my knowledge.

Q. Did you ever hear the term "legitimate jobber"? A. I don't recall hearing that precise term. There is a recognized difference in the character of jobbers, but whether that precise term is applied to any particular type, I don't know.

Q. Do you recall at any time during the 15 months' period, from October, 1927, to January, 1929, of any jobber trying to buy Arrow goods from the Hart & Hegeman Manufacturing Company? A. No, I don't recall any specific case. An inquiry of that kind might never reach me. It might have happened frequently, so far as I know, but it would not probably get beyond the district manager.

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Mr. Hayeraft: I think that will be all.

Mr. Gross: That is all.

Mr. Hayeraft: Mr. Examiner, at this time I should like to ask counsel for the respondent a question which I understood from discussion we have had off the record he is willing to answer on the record, with reference to testimony of certain jobbers which the Commission has

introduced, who testified in Hartford, in Boston, and in New York City, at the hearings heretofore held. I refer to the testimony of Mr. John J. Keane and Mr. John M. Dalton, who testified on June 1 at Hartford, to all the witnesses at Boston on June 3, and to all the witnesses in New York City on June 5, being all the jobbers who testified in this proceeding, and my question with respect to the testimony of these witnesses is whether or not counsel for the respondent is willing to stipulate that their testimony is typical of the jobber customers of the respective companies, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, at the time they operated as separate companies or separate divisions of the present respondent, during the time covered by their testimony, and throughout the country wherever these concerns did business. 2059 2060

Examiner Reeves: Counsel for respondent will be offered an opportunity to make a statement for the record in response to the question propounded by counsel for the Commission.

Mr. Gross: Counsel for the respondent understands the suggestion of counsel for the Commission is to expedite the hearings, and counsel for the respondent is willing to stipulate with counsel for the Government, so that both sides will stipulate the same, that evidence of these jobbers already introduced would be fairly typical of the situation throughout the United States, and counsel for the respondent understands that counsel for the Commission does so stipulate. 2061

Mr. Haycraft: Yes.

Examiner Reeves: Is that satisfactory?

Mr. Haycraft: Yes, that is satisfactory to me, and I want it, of course, understood that

2062 I make the same stipulation that I am asking Mr. Gross to make for the respondents.

With that statement in the record, Mr. Examiner, counsel for the Commission rests.

Examiner Reeves: Counsel for the respondents will be offered an opportunity to now produce testimony in their behalf.

Mr. Gross: Mr. Examiner, counsel for the respondent would like to ask counsel for the Commission, who has now closed his case, whether the Commission makes any claim under the sub paragraph of the complaint, the supplemental complaint, relating to the re-
2063 straint of commerce or tendency to create a monopoly.

Mr. Haycraft: I am willing to make this stipulation: From the testimony that is in the record, it is my contention that there is no tendency to create a monopoly in the respondent corporation.

Mr. Gross: If your Honor please, at the close of the Commission's case, and before introducing any evidence on behalf of the old respondent or the new respondent, I desire to place on the record for the consideration by the Commission at the appropriate time this
2064 motion to dismiss the case, as in the nature of a motion for a nonsuit, on the ground that the evidence offered by the Commission fails to support the allegations of the complaint and/or supplemental complaint.

The grounds are that there is no evidence whatever in the record to show that the effect of the acquisition by the old respondent of the common stock of the Hart & Hegeman Manufacturing Company and the Arrow Electric Company was or might be to substantially lessen competition in electrical wiring devices

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between these two companies or to effect any restraint of commerce in electrical wiring devices, or to tend to create a monopoly in the commerce of such devices. There is no evidence to show that the use by the voting power or granting of proxies, or otherwise, by the old respondent of the common stock of the Hart & Hegeman Manufacturing Company or the Arrow Electric Company had been or was to substantially lessen competition in electrical wiring devices between these two companies or to effect any restraint of commerce in electrical wiring devices, or to tend to create a monopoly in electrical wiring devices. On the contrary, the evidence is all to the effect that there was no lessening of competition, either between the two companies or in the industry at large, but, rather, a stimulation of that competition.

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Furthermore, there is no evidence to indicate any injurious effect to the public from these various steps, as required by the Clayton Act, and the cases interpreting the same, including the case of the International Shoe Company. Whether, therefore, the interpretation placed upon the Act by my friend, as attorney for the Commission, or by us, as attorneys for the respondents, is taken, we respectfully submit that there is no evidence whatsoever to sustain the complaint and/or supplemental complaint.

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Furthermore, we respectfully move to dismiss both the original and the supplemental complaint, in the first place, on the grounds stated in our original motion to dismiss, filed in October, 1929, in the light of the evidence

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offered by the Commission, and, in the second place, on the ground that all the evidence introduced on behalf of the Commission establishes that whether or not the jurisdiction of the Federal Trade Commission extends over and beyond the period of the holding company into that of the new respondent, there has been no lessening of competition between the two divisions of the new respondent, either in the narrow interpretation of my friend, the attorney for the Commission, or in the interpre-

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tation which we as attorneys for the respondent place upon the Clayton Act, in the light of the decisions of the Supreme Court of the United States, particularly in the International Shoe case.

Furthermore, there is no evidence whatever that at any time, from October 6, 1927, to the present moment, the public has been in any way injured, but the evidence is all to the contrary, that the public at large has been benefited by what has taken place.

Examiner Reeves: The Examiner is of the opinion that he has no power or authority to

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pass upon a motion of this nature, and it will be held for action by the Federal Trade Commission on final hearing.

(Discussion off the record.)

Mr. Gross: I will call Mr. Wilson.

CHARLES E. WILSON, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR GROSS:

Q. Your name, Mr. Wilson. A. Charles E. Wilson.

Q. Where do you live? A. Bridgeport, Connecticut.

Q. What is your occupation? A. Vice-President, General Electric Company.

Q. What department of the business of the General Electric Company do you have in hand? A. The merchandising department. 2072

Q. Does that cover in part what we know in this case as the Electrical Wiring Device Industry? A. It does.

Q. Does it cover some other, kindred articles? A. It covers construction material and all kinds of wiring materials.

Q. How long have you been connected with the General Electric Company? A. 32 years.

Q. How long have you been connected with the electrical wiring industry as part of your work? A. 8 years. 2073

Q. Is it part of your duty as Vice-President of the General Electric Company in charge of electrical wiring devices, and so forth, to be familiar with the electrical wiring device industry in this country? A. Yes, it is.

Q. And you are familiar with it? A. Yes.

Q. Are you familiar with its marketing conditions? A. I am.

Q. Are you familiar with the business of your competitors? A. Yes.

Q. With their types of products? A. Yes.

Q. Their methods of selling? A. Yes.

Q. Are you familiar with the products of the Arrow Electric Company and of the Hart & Hegeman Manufacturing Company, and the Arrow Division and the Hart & Hegeman Division, as shown in their catalogues? A. Yes.

Q. The exact date is not material, but are you familiar with the fact that, as testified here, in October, 1927, the common stocks of the Arrow Electric Company and of the Hart & Hegeman
2075 Manufacturing Company were acquired by a holding company with the title of Arrow-Hart & Hegeman, Incorporated? A. Yes, I know that.

Q. Are you also familiar with the fact that late in 1928, the holding company was dissolved, and as of January 1, 1929, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company were merged and consolidated into the Arrow-Hart & Hegeman Electric Company? A. Yes, I know that merger.

Q. Are the electrical wiring devices sold by the General Electric Company similar in purpose to those manufactured formerly by the Arrow Electric
2076 Company and the Hart & Hegeman Manufacturing Company, and since January 1, 1929, by the Arrow Division and the H. & H. Division of the consolidated company? A. Yes, our lines parallel theirs.

Q. Prior to October, 1927, was your sales organization engaged in the endeavor of selling your wiring devices to the same type of customers as the Arrow Electric Company and the Hart & Hegeman Manufacturing Company were engaged? A. They were.

Q. And vice versa, at that time, were the Arrow salesmen and the Hart & Hegeman salesmen en-

deavoring actively to sell their products, respectively, to the same type of customers as those to whom you sold? A. They were.

Q. So that your sales organziation and their sales organization were endeavoring to sell generally to the same type of customers? A. That is right.

Q. From your familiarity with the industry and your competitors' business, so far as you could judge, after the organization of the holding company, in October, 1927, and during the remainder of 1927 and all during 1928, was there any change in the selling policy of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company in this regard? A. None that I could ever see. 2078

Q. Did your organization and did you notice any lessening of effort after October, 1927, when the holding company was formed, on the part of the two organizations, that is, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, to solicit business and make sales of their respective products? A. Absolutely no lessening of effort.

Q. So far as you know, was there any change in the selling policy of these two sales organizations after October, 1927, from that previously carried on by them as the Arrow Electric Company and the Hart & Hegeman Manufacturing Company? A. No change. 2079

Q. Now, after January 1, 1929, which is the date when the Arrow Electric Company and the Hart & Hegeman Manufacturing Company were consolidated in the Arrow-Hart & Hegeman Electric Company, and the two sales organizations were continued as the Arrow Division and the H. & H. Division of the consolidated company, do you know of any lessening of effort on the part of these two

2080 *Charles E. Wilson—Direct.*

organizations to solicit business and make sales of their respective products? A. Still no change that I could see.

Q. And that brings you down to the present time? A. Yes.

Q. Now, having testified that both of these companies until the close of 1928, and both divisions of the merged company since January 1, 1929, have been actively engaged in competition with your company in the marketing of electrical wiring devices, I ask you, from your familiarity with the entire
2081 industry, whether or not, in your opinion, anything which has been done by the Arrow Electric Company or by the Hart & Hegeman Manufacturing Company, or by the old respondent, which is the holding company, or by the new respondent, the consolidated company, known as the Arrow-Hart & Hegeman Electric Company, that has had any effect or tendency to restrain commerce in electrical wiring devices, in which these two companies were severally engaged, in any way or in any place or in any community?

Mr. Haycraft: I object to that, Mr. Examiner, on the ground that it calls for a conclu-
2082 sion of the witness based on a statement of facts which are not in the record. The conclusion which he is called upon to make is one that the Commission itself must draw from all the facts in the record in order to determine the issues in this case.

Mr. Gross: If your Honor please, here we have one of the outstanding competitors of this company. This gentleman is at the head of that company so far as the electrical wiring device industry is concerned. He is an expert

in the marketing of electrical wiring devices, and he has been qualified as such; he is therefore qualified as an expert to state out of his own knowledge the situation in that industry; and I know of no better way than by calling one of our own outstanding competitors and asking him that question. Certainly we cannot call the general public. We can do nothing better than calling in a competitor to have him say whether we did anything inimical to the public.

Examiner Reeves: It occurs to the Examiner 2084
that this is a repetition of the objection urged at a previous session, and that you are asking the witness to state what is merely a conclusion.

Mr. Haycraft: Based on reports which he undoubtedly received, he believes from his knowledge of the industry that certain conditions exist as to solicitation and effort. Now, as to the result or effect of that testimony, that is for the Commission to determine, and not for this witness. You cannot put in a conclusion of this kind and rely on your judgment whether or not the act was violated. Of course, 2085
counsel for the respondent may argue it, but that is purely a matter of argument and opinion.

Mr. Gross: It is a broader question. It is a question of a conclusion of fact, and not of law; whether he has any complaint, virtually, against this concern as his competitor.

Mr. Haycraft: That is not an issue.

Mr. Gross: Oh, yes, it is. Your own rules of practice issued by the Commission have shown that there is nothing done by the Commission

except in the interest of the public, and the very best person who can say whether we injured the public is one of our competitors.

Mr. Haycraft: We are operating under a specific statute, and under the specific language of that statute.

(Discussion off the record.)

Mr. Gross: That again is the very narrow interpretation of that act. We rely on the International Shoe case, that there must be an injurious effect to the general public. I claim
2087 the question. It is a question which this witness can properly answer.

Examiner Reeves: The objection is sustained.

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: An exception is noted.

Q. Have you or the General Electric Company, so far as the electrical wiring device industry is concerned, any objection to any of the selling methods of the Arrow Electric Company or the Hart & Hegeman Manufacturing Company, from October, 1927, to January 1, 1929, and after January 1, 1929, on
2088 the part of the Arrow Division and the H. & H. Division of the new respondent?

Mr. Haycraft: That is objected to, Mr. Examiner, as not within the issues of this case, whether this witness had any objection to the selling policy of the respondents.

Examiner Reeves: The objection will be sustained.

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: Exception noted.

Q. Within your knowledge, has the Hart & Hegeman Manufacturing Company and the Arrow Electric Company from October, 1927, to January 1, 1929, done anything in the marketing of their goods which in any way restricted your company from free access to the trade and the freest competition in the trade with them? A. No.

Q. And likewise, the same question with reference to the period after January 1, 1929, on the part of the H. & H. Division and the Arrow Division of the consolidated company? A. No.

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Mr. Gross: Do I understand that counsel for the Commission makes no claim in this case of unfair methods on the part of the respondents?

Mr. Haycraft: There is nothing in the complaint. The methods are not an issue.

Q. Are you familiar with the Arrow trademark or brand which was placed on the goods sold by the Arrow Electric Company and now sold by the Arrow Division of the consolidated company? A. I am.

Q. Are you likewise familiar with the H. & H. trademark or brand which was used by the Hart & Hegeman Manufacturing Company and later used by the H. & H. Division of the consolidated company? A. I am. 2091

Q. In your opinion, what would have been the effect upon the organization of the holding company in 1927, or later upon the merger of January 1, 1929, upon the new respondent, if the marking of these separate brands on separate lines of goods would have been discontinued and one brand had been put out, indicating one line of goods?

2092 *Charles E. Wilson—Direct.*

Mr. Haycraft: I object to that question, Mr. Examiner, on the ground that it is irrelevant and immaterial to the issues in this case—the problematical effect. It is contemplating a situation which is not in the record. It is a prophecy as to something that has not happened. Therefore, it is incompetent, as well as irrelevant and immaterial.

Mr. Gross: I think it is clearly testified that the reason for the formation of the holding company was to preserve the integrity and the
2093 commercial value of the two distinct lines of goods, the two distinct brands, and that was the only purpose for forming that corporate organization.

(Discussion off the record.)

Examiner Reeves: The objection will be sustained.

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: The exception is noted.

Q. As a competitor of the Arrow Electric Company and of the Hart & Hegeman Manufacturing
2094 Company, prior to October, 1927, and also from October, 1927, to December 31, 1928, was there competition in brands on the part of the H. & H. goods and the Arrow goods with the goods which you put out with the G. E. Brand upon them?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial to the issues in this case. The competition in this case is not restricted to these two brands, but includes competition among others, and to take a part

of the issue and separate it from the rest of the issue, to my mind, is not proper.

Mr. Gross: My learned friend is taking another horn of the dilemma. He has said that I cannot ask the broad question of a gentleman who is one of our outstanding competitors, but he dares to allege that there is a lessening of competition. I am going to show that there was a distinct competition between the Arrow and H. & H., and I am told that that is not proper.

Mr. Haycraft: There is a further reason, on the ground that it calls for a conclusion of the witness which the Commission must itself draw from all the facts in the case. 2096

Examiner Reeves: The objection will be overruled. You may proceed.

Mr. Haycraft: Exception.

(The last question was read by the reporter.)

A. There was competition.

Q. And that competition continued as strenuous after October 6, 1927, and during 1928, as it was prior to October, 1927?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial to the issue in this case. 2097

Examiner Reeves: Objection overruled.

Mr. Haycraft: Exception.

A. It did.

Q. Has that competition continued as actively since January 1, 1929, when the new respondent was formed, and these companies were selling as separate divisions? A. It has.

2098 *Charles E. Wilson—Direct.*

Q. Would your company have had as severe competition after October, 1927,—October 6, 1927, in selling G. E. goods if you only had one brand instead of H. & H. and Arrow brands, both, on the market, in your opinion?

Mr. Haycraft: That is objected to on the same ground, and as problematical.

Mr. Gross: I claim that, if your Honor please. He said there is competition between the two.

2099 Examiner Reeves: Will the reporter read the question?

(The last question was read by the reporter.)

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

A. No, we would not have had as severe competition.

Q. Has the quality of the electrical wiring devices formerly marketed by the Arrow Electric Company and by the Hart & Hegeman Manufacturing Company, and then by the Arrow Division and by the H. & H. Division of the new respondent, in your opinion, improved or deteriorated since October, 1927?

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Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial.

Examiner Reeves: What is the contention of counsel for the respondent as to the materiality of that testimony?

Mr. Gross: I intend to prove by the best evidence possible, namely, by competitors, that the effect of these corporate steps to which the Federal Trade Commission takes exception in

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the interest of the public, has been to benefit the public by improving the quality and improving the industry.

Examiner Reeves: Do you think that is material?

Mr. Gross: I certainly do. It is the ultimate issue in this case, the final issue in this case.

Examiner Reeves: The witness may answer.

A. I believe the quality has improved.

Mr. Haycraft: Exception.

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Q. To what do you attribute this improvement in quality? A. I think it has been brought about by the consolidation of engineering forces, and the consolidation of manufacturing facilities, getting very much larger production in one place, which has enabled the manufacturer to devise very much better wiring devices.

Q. Have these two companies prior to December 31, 1928, and as two divisions since then, in your opinion, been able to effect economies in manufacture as a result of these steps?

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Mr. Haycraft: That is objected to on the ground that it is incompetent, irrelevant and immaterial to the issue in this case.

Examiner Reeves: The Examiner is of the opinion that this inquiry is immaterial, but inasmuch as I have let part of it in, counsel for respondent may proceed to a reasonable extent further.

Mr. Haycraft: In view of your ruling, Mr. Examiner, I move to strike out the last question and answer.

2104 *Charles E. Wilson—Direct.*

Examiner Reeves: The motion to strike is denied.

Mr. Haycraft: Exception.

A. I believe they have accomplished economies.

Q. As one qualified by long experience in the marketing of electrical wiring devices, and as head of your department in the General Electric Company, will you discuss the situation in the last five years in the electrical wiring device industry with reference to competition. Where is the real competition in the marketing of goods?

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Mr. Haycraft: Mr. Examiner, objection is made to that question on the ground that he can only point to one phase, the point of creating a monopoly, and counsel for the Commission has stated on the record that there is no showing up to the present time that there is any tendency to create any monopoly. The question is irrelevant and immaterial to the issues involved in the case, namely, competition between these two concerns.

Mr. Gross: If your Honor please, the questioning of lessening competition between these

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two concerns has been restricted by my learned friend as saying that the sole competition is between the two sales organizations in their sales to jobbers. In the testimony of the jobbers I have gone into the question whether that competition did not lead beyond that, the ultimate moving of the goods, being the jobbers' getting rid of their goods on the shelves, to the ultimate consumer. I am asking this man as an expert to explain the competitive situation as it developed in the past five years, and

where the real competition is in the industry. It seems to me that is the real question in the case, whether there has been any lessening in competition.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

A. The most difficult competition is not found in getting your goods on to the shelves of jobbers. It is found in having your goods used in as large a quantity as you want them to be used by the electrical contractors and by those industrials and 2108
manufacturers who purchase them from the jobbers. You can't depend on the jobbers to do a real selling job in favor of your goods with the large users. You have got to keep up a tremendous constant pressure yourself in favor of your goods with the architects, engineers and building owners. Even after you have prevailed on some, let us say, building owner, about to put up a new building, and then probably sold the engineer that he hires the quality of your goods, you have still got to go further and sell the electrical contractor your goods, and turn him over to the electrical jobber to make the purchase. Your tre- 2109
mendous competition is with your various competitors in making the ultimate consumer, who is usually the contractor or the manufacturer or the industrial, to take your goods over somebody else's goods.

Q. What does the General Electric Company do on its part to help the jobber sell his goods? A. We maintain at strategic points in the country so-called building equipment departments to work with the building owners and the engineers, archi-

2110 tects, industrials and manufacturers, prevailing upon them to use our goods, pointing out the quality features of them, and so forth.

Q. Do you advertise in trade journals, and otherwise, your brands? A. Yes. In an effort to obtain a good proportion of the wiring device and construction material business we carried on consistently for a number of years very extensive advertising compaigns, setting forth the value of the General Electric wiring system against our competitors' materials.

2111 Q. And that includes what we know as electrical wiring devices? A. Yes. Wiring devices are one important item in it. In our advertising we point out that our wiring devices are of high quality, to prevail on him that he ought to use it.

Q. And all this advertising, and all these efforts to sell these goods, are to induce the public to buy your goods from your jobbers? A. Yes. We can't depend on our jobbers for that work.

Q. Whether or not competition in the electrical wiring device industry is primarily a question as to how many jobbers in any town you can get? A. No, it is not.

2112 Q. Whether or not adding another jobber might lessen the volume of your trade rather than increase it? A. I would say that was immaterial.

Q. Whether there are concerns in the electrical wiring industry who may be considered leaders in the development of the art and the perfection and improvement of the devices themselves as distinct from the large number of other manufacturers in that same industry? A. Oh, yes, there are.

Q. Will you explain the question of competition between these different types of manufacturers? Is it entirely a question of price or a question of

quality or perfection? Just discuss that. A. There are a number of manufacturers in the industry who have large engineering forces and who keep abreast of the requirements of the wiring art, and who bring out quality merchandise to satisfy the changes in the art; and there are other manufacturers in the industry who maintain practically no engineering forces, but who follow these leading manufacturers, whose product is acceptable to the best engineering minds in the wiring industry. They follow them, and sometimes cut the quality somewhat, making merchandise that is—I regard it as 2114
somewhat unsafe—bringing it out, therefore, at lower prices against this quality of wiring material that we regard as safe, and the only kind we are willing to market.

Q. In which of these two classes do you put the Arrow Electric Company and the Hart & Hegeman Manufacturing Company before and after October, 1927, down to 1929; I mean, as leaders or followers? A. Unfortunately for my own business, and the one I am interested in, they have always been manufacturers of very high quality wiring devices, and still are.

Q. Is that same thing true since January 1, 2115
1929? A. Yes, it certainly is.

Q. What is the reputation of the engineering department of this concern? A. Most excellent.

Q. As one intimately acquainted with the domestic wiring device industry, and with its marketing conditions, I ask you whether anything that has been done in these corporate changes between the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, including the organization of the holding company in 1927, and the final merger of the two operating companies into

the new respondent, has in any way injured the general public or that portion of the public which buys and uses electrical wiring devices?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial to any issue in this case.

Mr. Gross: I claim it, your Honor.

Mr. Haycraft: That is a conclusion which the Commission must draw, if it is an issue.

Examiner Reeves: The objection will be sustained.

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Mr. Gross: Will your Honor note an exception?

Examiner Reeves: Exception noted.

Q. If your General Electric Company today were enabled by some corporate steps to supplement your existing line of jobbers by putting on a new distinct line of jobbers alongside of them in all the communities, would your mass production be increased thereby?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial to the

2118

issues in this case.

Mr. Gross: My learned friend and I very strongly differ on this question of opinion evidence from an expert. I have found throughout my entire practice that a court welcomes expert advice and opinion on something that is peculiar to the particular industry involved, or the particular marketing conditions, or whatever the issue may be, and that when a man is once qualified, whether it be medicine, sales, or any other line in which he is an expert, he can

then aid the court by speaking out of his experience to enable the court to reach its conclusion on the advice of an independent expert. My learned friend has said that I cannot introduce opinion evidence from anyone in our organization, and I have gone outside and brought in two gentlemen who are leaders in the industry, who look at us from the outside, and my learned friend says that I cannot go into the question and give to the gentlemen on the Commission who are engaged in the electrical wiring industry and not engaged in any industry, expert assistance in the solution of the problems which are placed before them. 2120

Examiner Reeves: It does not appear to the Examiner that this is a proper question for development by expert testimony. It would no doubt be proper for counsel to show by the witness the conditions which existed in the industry prior to the creation of the holding company and the consolidated corporation and subsequent to the creation of such corporation, but to permit the witness to express an opinion with reference to the effect of the creation of such corporations would not be proper. The objection is sustained. 2121

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: An exception may be noted.

Q. Have you in mind in the electrical wiring device industry any similar situation where a manufacturer has put out two brands with two separate sets of salesmen which you can refer to properly in evidence?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial to the issues in this case.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

A. Yes, I have in mind one line where there was a single manufacturer who made two brands and marketed them through separate sales organizations and through separate jobbers, and since they
2123 have continued to do that over a long period of years it is good evidence of the fact that that was the desirable thing to do, and in that way they got a larger proportion of the business than they would otherwise have enjoyed.

Mr. Haycraft: In view of the answer, I move to strike it out as not within the issues in this case.

Examiner Reeves: The motion will be denied.

Mr. Haycraft: Exception.

(Discussion off the record.)

2124 Q. On the record, Mr. Wilson, I will ask you whether you would rather not give the name of that concern? A. I would rather not.

Mr. Gross: That is all right. You may inquire.

CROSS EXAMINATION BY MR. HAYCRAFT:

Q. When you testified that the General Electric Company and the Arrow Electric Company and

the Hart & Hegeman Manufacturing Company back in October, 1927, were attempting to sell to the same type of customers, what did you have in mind? A. That they sold also to electrical jobbers; that they sold to manufacturers—say, appliance manufacturers, and so on. I had principally in mind that they distributed their goods through electrical jobbers. 2125

Q. I believe you testified that you had observed no change in the selling policies of these organizations? A. No, I haven't.

Q. When you testified to that effect, did you have in mind any of the recent developments in their sales organizations whereby they have one sales manager in Hartford and district sales managers in various parts of the country who have charge of salesmen representing and selling both lines, the Hart & Hegeman and the Arrow? 2126

Mr. Gross: I object to "salesmen selling both lines."

(The last question was read by the reporter.)

Mr. Haycraft: That question is correct.

Mr. Gross: I don't think that question is borne out by the testimony. 2127

Mr. Haycraft: There isn't any question about it.

Mr. Gross: Salesmen selling both lines?

Mr. Haycraft: Yes, there is evidence that salesmen call on the trades and take orders for either Hart & Hegeman or Arrow.

Examiner Reeves: That is the recollection of the Examiner. I am not very positive about it, though.

2128 *Charles E. Wilson—Cross.*

Mr. Gross: I object to the form of the question as misleading and as a misinterpretation of the line of testimony.

Examiner Reeves: The objection will be overruled.

Mr. Gross: Exception, please.

A. I haven't that particular thing in mind, because I don't know that to be a fact, as you stated, that they have single salesmen who sell both lines.

Q. You don't know? A. No.

2129 Q. It has never been reported to you? A. No.

Q. If that were a fact, would that be a change in their policy? A. So far as I know, it would be no change in their policy.

Q. Do you know, then, that they had a sales manager in various district offices who had charge of salesmen selling both lines? A. Yes, I have understood that to be the fact.

Q. Would you say that was not a change in their sales policy? A. Why, it is a change in organization. I would regard it as a change in organization. I don't see that it has any effect on the sales policy.

2130 Q. What is your idea of a sales policy? A. Of a sales policy?

Q. Yes. A. A sales policy is a plan under which your organization works, the policy having been laid down by somebody.

Q. Prior to October, 1927, the Arrow Electric Company had a sales organization made up of a sales manager here in Hartford and various district sales offices scattered all over the country under district managers? A. Yes.

Q. And they had salesmen selling Arrow products exclusively? A. Yes.

Q. Likewise, the Hart & Hegeman Company had a similar organization? A. Yes.

Q. Would you say that the merger of these two organizations, whereby one man was the head of the sales organization and they had district sales managers in various parts of the country who have charge of salesmen selling both lines of goods would not be a change in the policy of that organization? A. It is a change in the organization, but their sales policy might be exactly the same as it has been previously.

Q. It might be? A. Yes, and according to my 2132
best knowledge, it was.

Q. Back before 1927, did you ever hear of an Arrow Electric Company salesman taking orders for Hart & Hegeman Company products? A. I have not heard of it since.

Q. Did you ever hear of a Hart & Hegeman man being in charge of Arrow salesmen? A. Prior to that time?

Q. Prior to that time? A. No.

Q. Did you ever hear of an Arrow man being in charge of Hart & Hegeman sales prior to that time? A. No.

Q. A merger of these companies in that form 2133
would not change the policy? A. Not any policy, any sales policy, no. Just a change in the organization structure.

Q. Was it the policy, so far as you know, for the division superintendents or district managers of the Arrow Electric Company prior to October, 1927, to solicit business for the Hart & Hegeman Manufacturing Company? A. For the Arrow—I want to be sure that I have your question. Was it the work of the Arrow district supervisor to

2134 *Charles E. Wilson—Cross.*

solicit business for the Hart & Hegeman Company prior to 1927?

Q. Yes. A. No, I don't think it was.

Q. Was it the policy of the Hart & Hegeman district managers to solicit business for the Arrow Company? A. Of course, I wouldn't think so.

Q. So far as you know, the Arrow organization was intent upon selling Arrow products prior to October, 1927? A. Yes.

Q. And the Hart & Hegeman organization was intent upon selling Hart & Hegeman products? A.
2135 Yes.

Q. In your testimony on direct examination you referred to the competition that existed between the Arrow, Hart & Hegeman brands, and the General Electric brands. What do you understand to be the meaning of the word "competition?" How would you define "competition?" A. Fighting for business, one against the other.

Q. And fighting—what do you mean by "fighting?" A. Using every fair means, such as impressing upon the respective buyer the higher quality of your goods, pointing out all its good features, impressing him with the service that you
2136 are able to render. Of course, it depends a great deal on the lines that have lasted a few years; impressing him with the fact that you are a concern that is going to do business in years to come, in the event anything goes wrong.

Q. Does price enter into it? A. Does price enter into it?

Q. Yes. A. Yes, price enters into it, to some degree: after all, there we have simply to meet whatever the market conditions are.

Q. Do credit terms have anything to do with it? A. A great deal to do with it, but not in fighting

to get the business. Whether you go to fight for the business,—you know in advance whether the credit is good, otherwise you don't go and fight for it.

Q. When you say that this competition has continued, do you mean the competition between the sales organizations of the two divisions, the Arrow Division and the Hart & Hegeman division of the Arrow-Hart & Hegeman Electric Company, has continued?

Mr. Gross: Since when?

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Q. Since October, 1927. A. If I understand your question right, it is whether I have noted whether there is competition between the Arrow,—between the Arrow salesmen and the Hart & Hegeman salesmen, whether it has continued.

Q. Yes. A. Yes, they fight for their business just the same.

Q. Where have you observed that? A. I have observed that specially in building work, where any number of companies have been specified for the wiring devices, that the Arrow people have fought for and the Hart & Hegeman people have fought for, in competition with the General Electric Company and any number of other competitors; all fought for the business.

2139

Q. In your observation, did you ever see an Arrow man solicit one week for Arrow and the next week for Hart & Hegeman? A. Never.

Q. If that were true, would you still be of the opinion that there was competition between the two divisions? A. If the salesman one week would advance the cause of the Arrow Company and the next week the same person would advance the

2140 cause of the Hart & Hegeman goods—well, I just can't conceive of that happening. It has never come under my observation.

Q. What would your opinion be if it did happen? A. I should say that the salesman was spreading himself pretty thin with that particular buyer. It possibly would be helpful to me.

Q. Suppose he wasn't calling on the same man, but called on a number of contractors? A. If he called on another contractor, I don't think it would be nearly as serious from the standpoint of hurt-
2141 ing his own cause.

Mr. Gross: I would like to note on the record that I do not object to his calling for a conclusion on his part.

Mr. Haycraft: His conclusions are in the record over my objections.

Mr. Gross: You are calling for a conclusion on hypothetical statements of what might be.

Mr. Haycraft: They are based on evidence in the record.

Q. Going one step farther, if one man directs
2142 the sales policy of a group of salesmen selling Arrow products and a group of salesmen selling Hart & Hegeman products, would that have anything to do with your answer that this competition has continued since January 1, 1929? A. No, it would not.

Q. And why? A. Well, because I can give you —I can think of another notable case where one man does direct—where one man is responsible for the sales policy of several groups of salesmen selling identical goods, or almost identical goods, under different trademarks, where there is a keen

competition between those groups of salesmen for the jobbers' business.

Q. How keen? A. Exceedingly keen. Keen because their compensation depends on the volume of business they get.

Q. Is that the way you measure competition, the keeness of competition, by that fact? A. What do you mean by the fact?

Q. The fact that the salesman has to depend for his compensation upon the amount of business he gets. A. I would measure it on whether it was just for the salesman to get the business or whether his living depended on it. If his living depended on it he is fighting for all the business he can get. 2144

Q. Within certain limitations? A. I don't think—

Q. Let me ask you this: Did you ever hear of a Hart & Hegeman salesman cutting his price on Hart & Hegeman products, or vice versa? In other words, did you ever hear of any price competition between an Arrow salesman and a Hart & Hegeman salesman, knowing that one man is in charge of both salesmen? A. Yes, I have.

Q. Where? A. That is, I have heard—I can't say that I have run the cases down, and therefore it is purely hearsay, but I have frequently heard of salesmen for both of these companies quoting prices that were lower than the going prices of things. 2145

Q. Both salesmen? A. Wait a minute. I only heard of one case doing it, one of the brands doing it. In other words, I have only heard of the case of an Arrow salesman cutting the price.

Q. That might be. You don't know that that competed with the Hart & Hegeman salesman when he made that cut? A. I should say he must have been competing with him.

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Q. Why so? A. We will say the Arrow man cuts his price. The Hart & Hegeman man was selling similar goods to another line of jobbers. Therefore it is to be assumed, since we did not hear of it, that he must have.

Q. He did not sell the same line of jobbers that the Arrow salesman did? A. In some cases he did and in some cases he did not.

Q. You stated that that was hearsay. As a matter of fact, all your testimony on the activities of the Hart & Hegeman people and the Arrow people

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was hearsay, wasn't it? A. I don't claim to be getting out in the field and selling these goods myself.

Q. You never came in direct contact with them? A. With the salesmen of the Arrow-Hart & Hegemany Company?

Q. Yes. A. No.

Q. Your testimony is based on reports that are made to you by your salesmen? A. By salesmen, the district supervisors, the sales manager.

Q. Can you conceive of a sales manager giving instructions to salesmen selling one line like the Arrow and another group of salesmen selling an-

2148

other line, like the Hart & Hegeman, where they would compete with each other in price or in credit, service, or anything of a vital nature of that kind? A. Yes.

Q. Where would your profits go? A. I wouldn't expect that to affect my profits.

Q. In other words, if you had a group of salesmen selling Arrow products and another group selling Hart & Hegeman products, you would allow one group—the Arrow, for instance—to cut prices to take business away from Hart & Hegeman; to cut each other's throats to get business away from

each other? A. No, I would not think it was necessary to cut their throats.

Q. I am asking you whether it is conceivable where a sales manager has two sets of salesmen selling two lines of competing products— A. To cut each other's throats?

Q. Yes. A. I don't know it would be necessary in this day and age to make it possible for them to do it.

Q. That is not responsive to my question. A. That is the best answer I can give you. I can't conceive of a condition that would be necessary to let 2150 them cut each other's throats.

Q. Or carry a lower price or give better terms? A. I can conceive of where one organization might, through its jobbers, find a condition that it had to meet, and my sales manager would tell him to meet that competition.

Q. With an outside competitor, but not with your own sales organization. That would be outside competition? A. It would have been brought about by outside competition.

Q. You would not allow one salesman to create a condition of that kind with another salesman of your own organization? A. I certainly would not 2151 have many cases.

Q. You expect to show profits from your sales. How long would it last if you allowed that? A. After all, the competition in this business we are talking about is the competition of the different— we are dealing with certain facts, and not with theories that might apply—the competition is to have your goods specified, and so on, and have them acceptable to the users, and there is your big fight.

Q. The user is interested in price? A. He is, but he is interested in other things; in quality, in serv-

2152 *Charles E. Wilson—Cross.*

ice; he is interested in getting the goods that the engineer on his job will pass; he has got a lot of other interests in addition to the price consideration.

Q. Now, as to the competition between these two lines with your electric jobber, your contractor, and your industrial organization: You have testified that it did not make any difference how many jobbers you had in a community in the volume of sales that you might sell, is that correct? A. I would qualify that a little bit this way, if I may: It de-

2153 pends on the kind of field organization that you yourself maintained. Now, in a territory where you did not maintain a field organization or organizations of your own, fighting for the contractors and the engineers' and the architects' and building owners' business, why, then the number of jobbers that you may have in a territory will affect the volume of your business. In other words, there is a certain stream that flows into the jobbers, of pick-up business, that a multiplicity of jobbers will be in your favor, whereas if you maintain your own organization, or fighting with these people, it doesn't make so much difference.

2154 Q. Don't some of these jobbers push a manufacturer's line exclusively? A. The fight that they put up for the manufacturers' goods is not satisfactory. It is not worth while.

Q. Then, if you had three, instead of one, would you still say that it would not increase it? A. On the pick-up it would.

Q. Where your brand has so much demand without— A. They come in and ask for it. If I could have more brands, I would take on more jobbers, and I would get more business in total. I wish I had five brands.

2155

Q. You would have more business? A. Yes, I would get more business, and by using tremendous advertising for each one, I would create more demand for them, and in that way they would be more valuable.

Q. What percentage of the electrical wiring jobbers of the country would you say stocked goods, compared with those who merely took orders? A. Electrical wiring jobbers?

Q. Yes. A. The vast majority of them stock goods. Electrical wiring jobbers?

Q. Yes. A. Oh, by all means.

2156

Q. Is it your idea, then, that they sit down and wait until the demand comes to them for the goods from the electrical contractors, industrials, and manufacturers? A. Oh, no, they don't sit down and wait for it. A jobber's salesman—a jobber maintains a sales force, but the average electrical jobber in this country today carries a tremendous line of many items, hundreds of items, and the wiring devices are a comparatively small part, and the average jobber will have on this line of material that we are talking about a comparatively few number of salesmen. Having to cover these thousands and thousands of items, you can't depend on them to get business. That is why you can't depend on them for all the volume you want. You have to supplement that, because it is spread too thin.

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Q. In supplementing it, in going direct to the consumer or user, do you make any different inducement other than you would in making sales to an electrical jobber? A. Our policy is not to sell. While we could get more profit, we have them buy their goods from the jobbers in that territory.

Q. Do you have anything to say about the prices that the jobber will charge this consumer? A. No;

the jobber makes the prices. We sell the quality and service, and so on.

Q. By service, you mean shipment? A. Yes, and the service that he will get, and we advertise that the G. E. products are made for lifetime use; that they are the best wiring devices, and we advertise that they will last as long as the house will last, and will not give trouble, such as blowouts, and so on.

Q. And the Arrow-Hart & Hegeman Electric Company advertises the merits of the two lines, the
2159 Arrow and the Hart & Hegeman? A. Both are accepted as excellent lines, but not quite as good as General Electric.

Q. And they are manufactured in the same factory by the same men? A. Yes.

Q. And so far as any inducement to the user is concerned, that would be the same, so far as these two products are concerned? A. I think so; they are both good.

Q. Do you know of any inducement that the Arrow salesmen could offer to the consumer and that is not offered by the Hart & Hegeman salesman calling on the same man? A. No, I don't know.

2160 Q. The same quality; the same service? A. The same quality.

Q. The same service? A. Yes, the same goods.

Q. You say so far as your price and credit is concerned, the jobber has to take care of that? A. Yes, he makes his own resale prices. Competition governs what you sell it at.

Q. Then, if I understand you correctly, competition in this particular field you might divide into two sections, into two distinct fields, one, competition between the manufacturers to get the business of the jobbers, and the other, to get the consumer

to take on the articles? A. Yes. competition does not stop with getting the jobber to take the goods.

Q. So far as the jobber is concerned, competition between the various manufacturers, it is primarily terms of sale and the price, is that correct? A. Well, the jobber takes on the line that the manufacturer has created the demand for. That is a consideration for the jobber, and the standing it has in his particular territory.

Q. Upon what information was your testimony based with respect to the economies that were worked out by the consolidation of these two concerns, the Arrow and the Hart & Hegeman? A. 2162
Well, from time to time they invited me to look over the plant—all our competitors invite us to come in and look over the plant, and we long ago adopted the policy of throwing our plants open.

Q. To any of your competitors, small and large? A. Yes, the worst gyp competitor we have we showed through our plant here just a few months ago.

Q. Did you look over the books of the Arrow-Hart & Hegeman organization to observe the saving in money? A. No, no, but I have been in the manufacturing business for about 32 years, all of my business life. In fact, I ran the plants of the General Electric Company for years, and I can tell 2163
the difference in manufacturing operations; I know the difference in combining manufacture in one place and getting double the volume through the equipment. There is no question about it.

Q. This economy in money: that wouldn't answer for the improvement in quality? A. Oh, well, you have got a certain competition to meet, and by geting economy in manufacture, that enables you to make refinements in quality and still meet your competition. That has been true. I could cite

numerous cases where we have been able to do it. Take one of the most important items in this line, in which we increased our production two or threefold at Bridgeport. In planning that we made various quality improvements that were possible, and gave to the public an article that is infinitely better, and that was only possible because we had gotten an exceedingly larger production. It could not have been possible before with a small production.

Q. Then, as I understand your testimony, with reference to economies that may have been worked
2165 out as a result of this merger, it is based on what you have observed, on your general experience, and not upon any study you have made of this corporation? A. I haven't made any study of these records.

Q. What products did you have in mind that you say were improved in quality? A. Sockets.

Q. Whose sockets? A. Arrow and Hart & Hegeman.

Q. Just what happened? A. Why, their mechanisms were improved, their operating mechanism.

Q. What did they do to bring about that improvement? What change in their operations took place
2166 to bring about the improvement? A. They changed their designs.

Q. Both designs? A. Yes, as far as I know, both.

Q. It is not your understanding that one manufactured the other's line after the consolidation?

Mr. Gross: After which consolidation? You are confusing these two periods right along.

Mr. Haycraft: I am not from my own standpoint.

A. I am frank to tell you that I don't know the exact dates of these changes.

Q. I couldn't expect you to do that. I do expect you to know something of what transpired, from the answer you made. A. If I may take another item— 2167

Q. Let us take sockets. A. I just can't tell you the date. I remember they changed their mechanism.

Q. Which one? There are two organizations. Did they both change, or did one change to conform to the other? A. I can't answer that. I know that the Arrow socket definitely happened to be the one I saw manufactured. The Arrow socket, in my judgment, improved, I thought, substantially. 2168

Q. You are sure it was not Hart & Hegeman sockets that were improved? A. I am not sure that they were not also improved, but say I saw the Arrow sockets manufactured.

Q. About when was that? A. I would have to say about—it was about—I am trying to think on that. I would say about 18 months ago.

Q. How would you compare that? With some previous inspection of the plant that you had made? A. Yes. I had been in there various times before.

Q. Before 1927? A. Yes, right up to date.

Q. Do you know where Hart & Hegeman sockets were manufactured prior to October, 1927? A. I can't remember that I saw the Hart & Hegeman socket. 2169

Q. Are you acquainted with the Paiste plant over in Philadelphia? A. No.

Q. Are you acquainted with their line of goods? A. I am acquainted with their line of goods, but I have not been through their plant.

Q. What other items do you have in mind when you say the quality was improved? A. I think attachment plugs were very much improved.

Q. When was that? A. Well, I don't know the dates. Well, some time during 1929, I think, the big improvement took place in them. I think it was in 1929.

Q. Both lines? A. Yes.

Q. Are you acquainted with the fact that some of their articles now being put out bear the trademark Arrow-Hart & Hegeman, both? A. I believe so.

Q. What effect, if any, is that going to have on the situation? A. I don't know that it will have
2171 any serious effect.

Q. Isn't it a combining of the good will of the two trademarks? A. That is a question that I would not feel qualified to answer, what the effect of that would be. I know what I might do under similar conditions. I know what I would do. Whether what I would do would be right, or what somebody else would do would be right, I don't know.

Q. You are put on here as an expert, and I am—

Mr. Gross: Do you want his conclusion, Mr. Haycraft?

The Witness: My conclusion as to what I
2172 would do?

Q. Now, I am just asking you whether or not the combining of that name, using the trademark Arrow-H. & H., is not combining of the good will of the two trademarks?

Mr. Gross: I object to the question. "Would be" and not "is not".

A. I would like to answer the question this way, that I personally would maintain—if I had two

trademarks, with a great deal of good will around each of them, I personally would maintain the lines separately, and I would fight for volume on each line.

Q. For what purpose? Why? A. Because each of those trademarks has a lot of good will, and I would maintain the volume that would come to me because of the good will of this trade mark.

Q. To retain your volume of sales or increasing your volume of sales by pushing two lines? A. Yes, I would hope to.

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Mr. Haycraft: I believe that is all.
Mr. Gross: That is all.
(Witness excused.)

ROBERT N. EAMES, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. Will you state your name, please? A. Robert N. Eames.

2175

Q. Where do you live? A. Bridgeport.

Q. What is your occupation? A. I am general manager of the Bryant Electric Company.

Q. How long have you been connected with the Bryant Electric Company? A. 25 years.

Q. Is the Bryant Electric Company engaged in the sale of electrical wiring devices? A. It is.

Q. How long have you been general manager? A. A little over a year.

Q. And before that what were you? A. Sales manager.

2176 Q. How long were you sales manager? A. 10 years.

Q. And prior to that? A. Export and service manager.

Q. As a result of your long period of service with the Bryant Electric Company, are you familiar with the electrical wiring industry in this country? A. I am.

Q. Are you familiar with the marketing conditions of that industry? A. I am.

Q. Are you familiar with the business of your
2177 competitors, and the general character of their business? A. I am.

Q. You are familiar with the various types of products of your principal competitors? A. I am.

Q. And with their methods of sales and distribution? A. I am.

Q. In particular, have you been familiar with the products of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company prior to October, 1927, as shown in their catalogues? A. Yes.

Q. And likewise with reference to the products of the Arrow Division and the H. & H. Division of
2178 the consolidated company since January 1, 1929? A. Yes.

Q. Not specifically as to date, but are you familiar with the fact that about October, 1927, the common stocks of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company were acquired by a holding company known as Arrow-Hart & Hegeman, Incorporated? A. I knew it at the time. I wouldn't be able to fix the date at this moment.

Q. And likewise, were you familiar with the fact that subsequent to that the holding company was

dissolved and the two operating companies were merged into the Arrow Hart & Hegeman Electric Company? A. Yes.

Q. And that date was fixed as January 1, 1929. Are the electrical wiring devices sold by your company similar to those manufactured formerly by the Arrow Electric Company and the Hart & Hegeman Manufacturing Company and since January 1, 1929, by the Arrow Division and the H. & H. Division of the consolidated company? A. They are.

Q. Prior to October, 1927, were your salesmen engaged in endeavoring to sell your products to the same type of customers as the Arrow Electric Company and the Hart & Hegeman Manufacturing Company? A. They were. 2180

Q. And, vice versa, prior to that time, were the Arrow salesmen and the Hart & Hegeman salesmen endeavoring actively to sell their products, respectively, to the same type of customers as those to whom you were selling? A. They were.

Q. In other words, did your organization and their sales organization endeavor to sell generally to the same type of customers? A. Yes.

Q. After the organization of the holding company in October, 1927, and during the year 1928, did you observe any change in the selling policy of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company? 2181

Mr. Haycraft: I must object to that question, until we find out what that policy is. It calls for a conclusion of the witness. I object to the form of the question.

Mr. Gross: I claim the question. It is a preliminary question. We have had the question before, and it was allowed.

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Mr. Haycraft: Yes, and I did not make any objection to it. Now I can see an objection to it from what has developed in the other examination.

Examiner Reeves: The objection will be overruled.

(The last question was read by the reporter.)

Mr. Haycraft: That is objected to as indefinite, Mr. Examiner.

Examiner Reeves: The objection will be overruled.

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Mr. Haycraft: Exception.

A. As far as I know, and we were pretty closely in touch with the situation, there was no change.

Q. Did you notice any lessening of effort after October, 1927, on the part of these two companies, the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, in their solicitation of business and making of sales of their products? A. There was no lessening of effort on the part of either.

Q. After January 1, 1929, when the Arrow Electric Company and the Hart & Hegeman Manufacturing Company were consolidated into the Arrow-Hart & Hegeman Electric Company, and the two sales organizations were continued as the Arrow Division and the H. & H. Division of the consolidated company, did you notice any lessening of effort on the part of these two sales organizations in soliciting business or making sales of their respective products? A. There was no lessening in this effort.

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Q. Having testified that both of these companies until the close of October, 1928, and both divisions

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of the merged company since January, 1929, have been actively engaged in competition with your company in marketing electrical wiring devices, I ask you whether, in your opinion, anything which has been done by the Arrow Electric Company or by the Hart & Hegeman Manufacturing Company, or by the holding company, the old respondent, or by the consolidated company, the Arrow-Hart & Hegeman Electric Company, has had any effect or tendency to restrain commerce in electrical wiring devices, in which these two companies were severally engaged, anywhere or at any place.

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Mr. Haycraft: That is objected to on the grounds stated previously in the record on questions propounded to the preceding witness.

Examiner Reeves: The objection is sustained.

Mr. Gross: May I have an exception?

Examiner Reeves: An exception is noted.

Q. Has your company been restricted in any way in its operation in selling its goods by anything which these various Arrow and Hart & Hegeman Companies have done since October 6, 1927?

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Mr. Haycraft: That is objected to on the same ground.

Examiner Reeves: Objection overruled.

A. No, we have not.

Q. Are you familiar with the Arrow trademark placed on goods formerly sold by the Arrow Electric Company and now sold by the Arrow Division of the consolidated company? A. I am.

2188 *Robert N. Eames—Direct.*

Q. Are you likewise familiar with the H. & H. trademark or brand used by the Hart & Hegeman Manufacturing Company and later by the H. & H. Division? A. I am.

Q. In your opinion, what would have been the effect, if upon the organization of the holding company, in 1927, or later, upon the merger, on January 1, 1929, the marking of these separate brands or different lines of goods had been discontinued and one line of goods put out under one brand had been substituted?

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Mr. Haycraft: I object to it on the same grounds.

Mr. Gross: I claim it now. My friend went into it very fully at the close of his examination.

Examiner Reeves: The objection will be overruled.

A. As a competitor we were closely in touch with the situation at that time, so far as we could be from information that we secured, and we hoped that they would combine with one brand, which would have made it very much easier for us.

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Q. Has the quality of the electrical wiring devices formerly marketed by Arrow and by the Hart & Hegeman Company, and later by the Arrow Division and the H. & H. Division of the Arrow-Hart & Hegeman Electric Company, improved or deteriorated since October, 1927?

Mr. Haycraft: I object to that.

Examiner Reeves: Objection overruled.

Mr. Haycraft: Exception.

A. It has improved.

Q. To what do you attribute this improvement in quality?

Mr. Haycraft: The same objection.
Examiner Reeves: Overruled.
Mr. Haycraft: Exception.

A. Well, first off, it was the natural trend of the art. It was necessary to have improvements in order to keep pace with the competition, and it was obvious that it became possible for the Arrow-Hart & Hegeman organization to expend more money as they consolidated on the engineering and 2192
research work in the development of high-grade material.

Q. Whether or not the increased volume of manufacture enables economies to be accomplished?

Mr. Haycraft: That is objected to, on the same grounds.

Examiner Reeves: The objection will be overruled.

Mr. Haycraft: On the further objection that the question is leading.

Examiner Reeves: Are you urging the objection that his question is leading? 2193

Mr. Haycraft: I make that objection.

Mr. Gross: I withdraw the question.

Q. In your opinion, has it been possible since October, 1927, for these two companies first, and then later, the two divisions, to effect economies in manufacture as the result of these corporate changes?

Mr. Haycraft: That is objected to on the ground that it is incompetent, irrelevant and immaterial to the issues in this case.

Examiner Reeves: The objection will be overruled.

Mr. Haycraft: Exception.

A. There is no question about it. We have been through a somewhat similar set of circumstances twice and with the same results.

Q. Has the engineering department of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company prior to the merger, and since then as the merged company, had a good reputa-
2195 tion? A. Excellent.

Q. What is the state of the electrical wiring industry in regard to character of manufacturers?. A. There seem to be two groups; one is sometimes called the old line of manufacturers, who are in it for years and hope to be in it for a great number of years, and who must plan accordingly, and who maintain research departments and laboratories and corps of engineers and experts of various kinds; and the others who are apparently in it for what they can get out of it while the going is good, and expect to liquidate and get out, and who make no particular preparations for the future.

2196 Q. In which class do you place the Arrow and Hart & Hegeman Companies before the merger and since the merger? A. Throughout that time we place them in the first class.

Q. What is the real aim of the sales organization of your company in marketing its goods?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial to the issues in this case. The Bryant Electric Company is not a party respondent to this proceeding.

Examiner Reeves: The objection will be sustained.

Mr. Gross: May I have an exception?

Examiner Reeves: Exception noted.

Q. What is the real sales effort of the electrical wiring industry, including your company and the Arrow and the Hart & Hegeman Company and the consolidated company?

Mr. Haycraft: That is objected to for the same reason, and for the further reason that it is entirely too broad. 2198

Examiner Reeves: Objection sustained.

Mr. Gross: May I have an exception?

Examiner Reeves: Exception noted.

Q. Will you discuss the question of competition in the electrical wiring device industry during the past five years?

Mr. Haycraft: That is objected to.

Examiner Reeves: Objection overruled.

A. Well, there are—

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Mr. Haycraft: It is too broad and too indefinite; that is a further objection.

Examiner Reeves: The objection will be overruled.

Mr. Haycraft: Exception.

A. This might be a very long story.

Q. Develop the situation as fully as you can. A. To begin with the jobbers; there may be two or three may be five in this territory. Manufacturers need that distribution, and naturally they cultivate

these different jobbers and endeavor to secure their support; also, they desire to have these jobbers stock their material. In years past the jobbers have created the market to a great extent. The number that the wiring device manufacturers furnish to any one jobber stocking the material is rather limited—in other words, they have a great variety and many classes of goods to sell. Among their salesmen they cannot have experts for all the different lines that they handle. When two groups of salesmen are put on, some kind of bonus or reward sys-
2201 tem is used, and particularly with jobber salesmen, as I understand it. These salesmen naturally undertake to sell the things that are most profitable to them, and to their companies, so their reward will be greater for selling profitable items, and therefore, a manufacturer who is dependent on these jobbers to distribute his goods finds it necessary to put forth a greater effort himself all the time to create a demand for these goods; so that the jobbers function as a sales channel for the manufacturers' goods is not anything like it was ten or fifteen years ago. Therefore the manufacturer has to put out a great deal more effort himself, and the result has
2202 been that manufacturers have increased their own sales forces. They have developed a demand among the consumers, and by consumers we mean perhaps the owner, perhaps the engineering organization, and in the case of a very large building, we can even in our case call the consumer the contractor or dealer. Now, it becomes necessary for the manufacturer to create that demand. He wishes to have the jobbers carry his material in stock, so that if any demand is created in the contractor or dealer or the consumer, as to his material, it will be available, and without delay. There are some old con-

servative jobbers, the same as there are old manufacturers, and there are young and active and aggressive jobbers who are willing and can operate on very much lower percentage of profit. Some manufacturers prefer one kind of jobber, and some prefer the other kind. In some territories a manufacturer will have several jobbers covering the same city, and in other cases a manufacturer prefers to have an exclusive representative. The competitive condition is more difficult today and during the past four years than it has ever been in this industry. Do you want me to go further? 2203

Q. Please. A. There are a lot of competitors who consider it is not necessary to have jobber distribution, particularly those who are not, as I stated, perhaps building for the future and planning to stay in the industry, and who are selling direct, without the jobber, and the old manufacturers who sell through jobbers have to take that into consideration. Nevertheless, it is assumed by these, the latter grade of manufacturers, that the benefits that they get from selling through a jobber, and by that I mean service and credit, and matters of that kind, offset the benefits that the other manufacturer gets in price by selling direct to the consumer, the consumer getting from them somewhat lower prices than by buying the other material through jobbers. It all results in the manufacturers having to maintain larger selling organizations of their own to create a demand all over the country. I don't claim that jobbers do not sell. Jobbers do sell. They have certain contacts in certain avenues which make it attractive for a manufacturer occasionally or many times to have more than one jobber in that territory, because the jobbers are in 2204 2205

2206 contact with different classes of trade. I can enlarge on that a little more.

Q. What you do to get to the ultimate consumer. A. What we must do first, is on specification work, and that means large buildings, apartment houses, where there is enough material to justify the effort —we must have our own field men get in contact with the architects, engineers, to see that the material will be specified, and from this it is a choice of two or more lines in this specification, and after that the manufacturer's man must see to it that—

2207 in our case—the Bryant material is clearly specified by the engineer or by the contractor, if it is the contractor who has the choice of the material, and we must keep in continual contact with the consumption, to see that the material is specified and right up to the moment when it is actually on the job; in fact, until it is installed, to see that for some reason or another the specifications are not changed and something else is put in place of it.

The matter of competition because of the price on the material which is a recognized quality is not so great as the competition on service, quality, and various relationships. Personal relationships will

2208 enter into many of these transactions, plus certain financial connections. For instance, it may be a well-known fact that a certain contractor has reached a point where he is practically financed by some jobber, and it wouldn't matter whose material was specified, if that jobber happens to be the distributor of a certain manufacturer, and the contractor was bidding, without any question that manufacturer would go in. Therefore, it is desirable in many cases for a manufacturer to have certain jobbers, but it is a hard thing to state that the addition of a jobber might increase distribu-

tion. It might in some territories, in some cases; on the other hand, another territory, where the manufacturer will increase his jobbers, it might easily upset the distribution.

Q. It is, therefore, a question largely of good will behind the brands?

Mr. Haycraft: That is objected to.

Q. Do you advertise for the purpose of creating this demand? A. I stated in the other answer that you must have your brand well known; that there is a big value in brands, in tradmarks, and that in 2210
the course of years you can build up a great deal of good will for certain lines; that we had ourselves spent many thousands of dollars in advertising, to popularize it and make the public acquainted with the many Bryant products; that we have a sales force covering the whole country, and that we are advertising our brands all the time in order to influence the purchase of Bryant wiring devices.

Q. I ask you as one intimately acquainted with the domestic wiring device industry and with the marketing conditions, whether, in your opinion, anything which has been done in the corporate changes between the Arrow Electric Company and 2211
the Hart & Hegeman Manufacturing Company including the organization of the holding company and the final merger into the Arrow-Hart & Hegeman Electric Company has in any way injured the general public, or that portion of the public which buys and uses electrical wiring devices?

Mr. Haycraft: That is objected to on the same grounds.

Examiner Reeves: The objection is sustained.

Mr. Gross: May I have an exception?
Examiner Reeves: Exception noted.
Mr. Gross: You may inquire.

CROSS EXAMINATION BY MR. HAYCRAFT:

Q. In answer to a question propounded by counsel for the respondent you stated that you saw no change in the selling policy of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company after, say, October, 1927. What was the
2213 selling policy of these respective companies? A. I should state to you that during that particular period I was sales manager of the Bryant Electric Company, and it was my duty to watch this situation which was developing up here very carefully, to see what its effect may be on our company, and I did keep in pretty close touch with it. The sales policy of these two companies was a home organization, district offices—if you mean that—

Q. I want to know what you had in mind. A. Well, in our wiring device business, in many cases in presenting a statement before a group of people, or in an address, or in anything of that kind before
2214 a group of electrical people, somebody says, "What is your policy," and we say our policy is a jobber policy. That covers the picture almost completely to them.

Q. In other words, when you made your answer to that question, your idea was to convey that their policy of selling and their method of distribution through jobbers and through their salesmen was not changed; they continued to travel their salesmen and continued to sell through jobbers? A. Yes.

Q. That is what you had in mind? A. Yes.

Q. Now, you also testified that there was no lessening of effort on the part of these companies and even when operated as divisions since January, 1929. Upon what information do you base that statement? A. I was sales manager, and anything that was done throughout the entire field would come to me.

Q. Based upon reports made to you by your salesmen? A. Exactly, and district managers.

Q. From reports that you received, I assume that they said they encountered Arrow salesmen and Hart & Hegeman salesmen wherever they went? A. 2216
Exactly.

Q. They had not been withdrawn from their field activities? A. That is right.

Q. During the past has that report been universal? A. I will tell you on that. Mr. Covington of your organization—

Q. Of the Federal Trade Commission? A. —of your organization was in my office, and he asked me a great many questions in regard to the situation of the sales, and so forth, and at that time I was the general manager, and I wasn't in any close touch with the sales situation as I had been, and as we talked over the situation, he asked me if 2217
I had seen any change in the set-up of these companies, and I said absolutely none, and then it occurred to me that there might have been some changes that I didn't hear of, because I was not primarily interested in sales, so at that moment I qualified that and said that was true as far as I knew, and that I will check that up when our sales manager came in, who was out of the office at that time, and when he came in the following week, he said, yes, there has been one change as far as he knew, and he told me of the one change

which, I think, was in New York. Now, as far as I know and our present sales manager knows, the two organizations have been preserved intact.

Q. You don't know about the change in Boston? A. No.

Q. Chicago? A. No.

Q. Or Philadelphia? A. No.

Q. Where one sales manager or district manager is in charge of salesmen who call to sell the Arrow line and sell the H. & H. line? A. No, I don't know about that.

2219 Q. You are not acquainted with the fact that in some instances, at least, Arrow salesmen will take orders for Hart & Hegeman articles and Hart & Hegeman salesmen will take orders for Arrow articles? A. I have never heard of such a case.

Q. Has it been brought to your attention that an Arrow salesman will go around one week with an Arrow jobber and attempt to demonstrate and push the merits of the Arrow line, and then the following week, or subsequently, will go around with a salesman of a Hart & Hegeman jobber and push the Hart & Hegeman line? A. I can scarcely see how that would be possible. I have never heard of it.

2220 Q. You have never heard of it? A. No.

Q. Those things which I have given you as examples of the conduct in the sales forces of these concerns, would that indicate a change in the policy, assuming that they were true? A. I would say not.

Q. You have never heard of that being done in two separate, distinct concerns, have you? A. Yes, I have. May I show you why I feel that way, that there was no change in the policy. The Bryant Company is 42 years old. In 1900 it purchased the Perkins Electric Switch Manufacturing Company

of this city and continued it up here for a year or so, and then moved it to Bridgeport, and became a part of the Bryant institution—that is, we moved it into the Bryant plant. For 16 years it maintained a separate identity. It had separate letterheads, and separate bills, and in the needs of our plant, because it had moved in, a portion had been built to accommodate them. They maintained a separate manufacturing process for the identical pieces. Anybody who wanted Bryant bought Bryant, and anybody who wanted to buy Perkins, bought Perkins, and it had distinct distribution, but the salesmen, the sales manager, the advertising manager, the service manager, the treasurer, and the auditor in each case was the same person. They maintained a complete and separate identity. The same salesmen sold the same group of jobbers, whether the Bryant or Perkins jobbers, but those jobbers were keen competitors. 2222

Q. To what extent would they compete? The price? A. No, there isn't any price competition.

Q. Service? A. Yes.

Q. In what way? I am talking between the different divisions of this organization, wherever the competition lies. A. Only in our effort to keep building it up. 2223

(Discussion off the record.)

Q. The question that I want to put to you is this: In your last answer you said to build up the two organizations. Now that of course was the purpose that you had in mind of keeping that a separate organization? A. Yes.

Q. By keeping a separate brand as well as organization with that other brand, you increased your total sales? A. Yes.

2224 Q. Would you do anything to assist one to take business from the other? A. It seems to me that the answer is a statement that I made some time back here, that we tried to sell Bryant to a certain consumer, to a certain jobber, for a certain purpose. If we couldn't get it, we would make a tremendous effort to get it for Perkins, and there was a slight difference in the brand, the identical product. It had "Bryant" on the Bryant, and "Perkins" on the Perkins, and these identities were maintained during that entire period.

2225 Q. You made only the explanation that logic could make, where you wanted to take business from an outsider, where the other brand couldn't get it? A. Yes, but there are jobbers who recognize that if the Bryant couldn't get that material through that jobber it would be Perkins who would try to get it through their jobber.

Q. You would not contend that that was competition between Bryant and Perkins? A. It certainly would keep the other competitor out.

Q. Yes, between you and an outsider, but it would not be competition between Bryant and Perkins? A. Well, what is competition?

2226 Q. I am asking you. That would be between you and an outsider? A. An outsider may have gotten it from Bryant in the same way that Perkins got it instead of Bryant.

Q. Would you ever force Perkins to make a price or concession or to give credit service that Bryant would not give, except in those instances to protect it from an outsider? A. We wouldn't force in either case, on price.

Q. Would you do it on credit? A. No, that wouldn't enter into it.

Q. The quality was the same in both items? A. No, not exactly, because in many cases there were different articles.

Q. On direct examination you also made reference to the fact that, in your opinion, competition—you would fear competition on two brands more than you would on one brand? A. Yes.

Q. Is that just a general proposition, or did you have some specific brands in mind? A. Well, if they were recognized brands it would be more than if it were just one brand. There are plenty of brands that don't mean anything. These two brands 2228 mean a great deal. If I had either of them I would not give up either of them.

Q. It would be your idea to push them both, to increase or maintain your sales position? In other words, if one was selling $3,000,000 and the other $4,000,000, you would attempt to push them both and keep up your seven million? A. Yes.

Q. On the other hand, might there not be a brand represented by a good will which would exceed the combined good will or sales effort of two or more brands? Under those circumstances you would fear one brand as much as more? A. Yes, if that were true.

Q. In other words, the value of a product is repre- 2229 sented, so far as you are concerned, by competition in the volume of sales that that brand represents over a given period of time? A. Let me say this. According to my understanding, the joining of these two companies did more to strengthen the two than just having brands.

Q. What effect do you think it would have on these various brands, the trade names, where the trade knew they were one and the same thing? A. I will re-state our own case. There was no one in

the trade who did not know that Bryant and Perkins were not one and the same, and still commercially it was useful and continued for 16 years.

Q. Because it kept up your volume of outlet? A. We had the good will of the Perkins Company and the good will of the Bryant Company.

Q. Did it make any difference whether your Bryant increased more than Perkins, or Perkins increased more than Bryant? A. I think it is a fair answer to say to you that if one had increased greatly to the exclusion of the other, that that would have been ultimately the company.

2231

Q. So far as your profits were concerned, it did not make any difference which brands you pushed or sold? A. I think I should say that it was better for the Bryant Electric Company to continue than to have it cease and have it become the Perkins Switch Manufacturing Company. The Bryant name was older. It was better for us to go on with the Bryant name.

Q. Of the two, Arrow and Hart & Hegeman, which was the older? A. Hart & Hegeman.

Q. Was there any great number of years difference between the two? A. That must be a matter of record, but I would say that it might be over 10

2232 years.

Q. Would the value of a trademark be measured somewhat by the length they were in business? A. I think it would depend on with which it was associated. I will say that to me the Arrow name has been associated with sockets and the Hart & Hegeman name with switches.

Q. You mean those are the ones that they specialized in? A. Well, they were best known in the industry in that way.

Q. Was that true after the consolidation? A. I think it is still true; right through.

Q. As a matter of fact, haven't they interchanged their ideas, and aren't they both selling the same articles? A. Not to my knowledge.

Q. Have you seen any of those items where both brands appear on them? A. I have not.

Q. Speaking of the preference of some manufacturers for one kind of jobber, and another kind of manufacturer for another kind, will you elaborate more upon that situation? A. Well, I did cover it somewhat. A big jobber organization of many 2234
branch houses has to have a home, central organization, a general department, perhaps, which greatly increases the overhead, and therefore this very home office organization has got to set up instructions for the guidance of all the houses. For instance, they have to say, "on every transaction you have got to make so much profit." A little new jobber starts in, in which the boss is also the salesman, bookkeeper, cashier and treasurer, and he has comparatively no overhead—he has some, but very small compared with this other firm. In any town he can operate to greater advantage than that old company. Now, a manufacturer, if he hasn't been 2235
able to get distribution of the whole organization, the big national distributor, coming into a town, even if he could get that branch house, it would not be as useful as the little fellow, who will be very anxious to get more business, and you have a choice of the kind of distributor.

Q. Isn't it a fact that the smaller jobber is more apt to devote practically all of his time to one line, whereas large jobbers will be jobbing, perhaps, four or five lines? A. You can't get an electrical jobber who can give his entire time to one line. The total

2236 *Robert N. Eames—Cross.*

sales of any one line are not enough. He has got to have a lot of lines.

Q. I am talking, of course, of different items of different manufacturers. What I have in mind is this: Where there is a small jobber and a large jobber, in getting business from the consuming trade, isn't it true that the small jobber is more apt to take a line like the Bryant or the Arrow, or some other manufacturer's line, and push that almost exclusively? A. Of the same character, yes.

Q. Under those circumstances, isn't it true that
2237 you find that he will actively push the manufacturer's line and will use his efforts to have it put in the specifications, and use his good will with the local people, and thereby to a great extent do the thing which your missionary salesmen are expected to do? A. He has so many different lines that he can't confine his efforts to any one of them or group of them, and he does depend on this effort of the manufacturer.

Q. Doesn't he go into the contractor and manufacturer and say, "I want to supply your needs," and electrical wiring devices are the principal things they go into? A. Not quite, as far as money
2238 is concerned. So far as money values are concerned, there are more outlet boxes, more pipe and cable, and things of that kind, than wiring devices. After those it may come in next.

Q. On the other hand, isn't it true that these large distributors, the large jobbers, themselves have a very valuable good will established by their organization and personally with the contractors and the industrial organization, which is sought after by the manufacturers? A. Did you say large or small?

Q. The large ones. A. There isn't a large jobber who hasn't some manufacturer's line.

Q. They can shift from one line to another, and have done it? A. These connections are pretty permanent. Some last for a great many years.

Q. I have in mind where a jobber testified where he shifted to your line or the Hart & Hegeman line, and he apparently had a great deal of trouble, and was able through apparently contact with the industry to make that substitution. A. There is always the effort on the part of the jobber to get the best line.

Q. Isn't that a fact? A. No, it is not a fact. Suppose I say it this way: We are forty years in the 2240
business, in this industry, and we have had for all these years very close contacts with the jobbers, and some prefer to handle only one line. He must have one manufacturer. He must have one complete line from one manufacturer. He does not want to shift to carry three different stocks, and most of which had to be complete, when he could go to one manufacturer and get the complete line. That was the reason why many of these combinations took place between the manufacturers. I spoke of our Bryant, which was socket, and Perkins, which was switch. The Hart & Hegeman was switch; the Arrow was switch, but mainly socket. 2241
If the jobber had one good line he wasn't anxious to trade or to take on another, and a lot of these jobber connections that were made many years ago still exist.

Q. The point of the question that I asked was this: Isn't it true that a number of the large jobbers have themselves a good will with their customers, principally electrical contractors and builders, in the various communities, whereby they could shift from one to another if they desired to do so? In other words, it seems to me that there has

2242 *Robert N. Eames—Cross.*

been a broad emphasis placed upon the value of the good will of an article, overlooking the good will of the jobber. A. It is a little difficult to answer that, because it would depend on the locality, and on how many jobbers a manufacturer wanted; who they were; and how influential they were, to influence the manufacturer. Some jobbers will admit that there is a certain class of business that they are perfectly willing to have another jobber take, and others are certain that they cover what another jobber could cover, and that the manufacturer has already two or three, and that to have another jobber would simply split the business that he has already. It depends on the jobber and the manufacturer and the territory.

2243

Q. As a matter of fact, there is a twofold phase in the sale of these lines; one, competition between them as to the sale to the jobber; that is service, price and credit, and also the attempt on the part of the manufacturer to secure business from the consumers. A. I doubt if price to the jobber enters into competition.

Q. He is not interested? A. The price is practically the same.

2244

Q. How about the so-called gyp jobbers? A. Gyp jobbers?

Q. Gyp manufacturers. A. I haven't used the word "gyp" myself, I think.

Q. Perhaps it was the other witness. A. No, I don't generally use it. Mr. Covington asked me why it was that a group of manufacturers were known as pirates by the jobbers, and I explained to him that the reason that jobbers call manufacturers pirates is because they do not get a chance to make a profit on the product manufactured by the manufacturers, because they sell them direct.

He doesn't get any profit on their business because they don't sell to jobbers, and therefore there is no price to the jobbers.

Q. How about the market conditions of the wiring device articles so far as the jobber is concerned when he purchases from the first class of these manufacturers? A. If you care to look it up, they publish very complete discount sheets, showing the jobbers' cost. The articles manufactured by these people, these plants, are good enough, so that, as far as their usefulness is concerned, there isn't any distinction between them. Now, I say they are 2246 good enough, they go over the underwriters' requirements, and therefore they are abundantly good for the purpose. Now, if one of these manufacturers who makes something that is ten times as good, we will say, a pull socket, and has a price on that to be sold to the jobber, and there is a quarter of a cent in his price, and another manufacturer gets out a discount sheet which shows the switches he makes and used for the same purpose, which is nine times as good, and it is a quarter of a cent less, the jobber of the first manufacturer would go back and say that he can get this socket for a quarter of a cent less, and he won't pay an 2247 eighth of a cent more. You have got to meet this price. These are published prices, and you will find that they are practically identical on the same article. They must be.

Q. How long has that been true? A. Ever since I know anything about the business, and that is 25 years.

Q. How many manufacturers would you say got out this circular of prices? A. I would say six.

2248 *John R. Cook—Recalled—Direct.*

Q. Are there any more than six that sell to the jobbers? A. Not exclusively.

Q. Are they the only manufacturers in the industry that recognize this system of distribution and have this same selling policy of selling through the jobbers in the country? A. Only wiring device manufacturer?

Q. Yes. A. Exclusively, yes. I say that to the best of my knowledge I think that is so.

Mr. Haycraft: I think that is all.

2249 Mr. Gross: That is all.

Examiner Reeves: We will take a recess until 3 P. M.

(Whereupon, at 1:45 P. M., June 17, 1931, the hearing was adjourned until 3 P. M.)

AFTER ADJOURNMENT—3 P. M.

Examiner Reeves: Let the record show that Mr. Cook is recalled for further examination.

2250 JOHN R. COOK, was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. Mr. Cook, there has been some testimony in a general way as to the economies in manufacturing which have resulted, first, from the community of interest arising out of the old respondent and carried on into the period of the merged corporation. Have you had a further investigation made, and

can you give us in more detail these economies which you know have been made from 1927 to the present time? A. I can. It will be necessary for me to go on in great length on some of them, and we have not tried to cover the ground except in a general way. I can on pertinent things in the line that we have done for economies.

Q. All with which you are thoroughly familiar yourself? A. Yes.

Q. Will you make your statement in a general way? A. Starting in during the period of 1927 and in 1928, the first major step taken by the company 2252
was: It was decided that the Hart & Hegeman Company was losing money in making sockets and attachment plug material—this was roughly Schedules B and P—and the Hart & Hegeman Manufacturing Company, after this investigation, requested the Arrow Electrical Company if they would give them prices on manufacturing this material for them. The Arrow Electric Company figured on this and were able to quote the Hart & Hegeman Company prices that would allow the Hart & Hegeman Manufacturing Company a margin on the business, whereas heretofore they had been losing on the business. In the meantime the 2253
Arrow Company were able to produce this material in their factory, giving them a far larger production than they formerly had had on socket and plug material, and enabling themselves to make a larger margin on the material.

Then, in 1927 and 1928 the Hart & Hegeman Company were contemplating purchasing a cold molding plant, that is, to make material known under the trade name of gummon. This material, the cold-molded, largely replaced the porcelain

material. In a great many places it was better, and it had a greater acceptance with the public, and in going into this it enabled the Arrow Electric Company—the Hart & Hegeman Company decided to purchase, instead from the Arrow Electric Company, enabling the Arrow Electric Company to erect a plant and expand along such lines that their material could be manufactured very economically.

During the same period bakelite commenced to appear on the market commercially, and the Arrow
2255 Electric Company started their plants in the manufacturing of bakelite. This development went very fast and it became very essential to the market to have bakelite, bakelite displacing a great deal of porcelain and cold-molded material, which formerly had an acceptance. It is only through the combined resources of both companies that we were able to keep pace with the development of bakelite and the enormous amount of equipment required in the manufacturing of it.

In 1927 and 1928 the Hart & Hegeman Company experienced a tremendous amount of business on switches that required automatic screw
2256 machine parts. At that time we did not have ourselves sufficient equipment to keep up with the demand.

Q. That is the Hart & Hegeman Company? A. Yes, Hart & Hegeman. It was necessary to buy these parts outside to meet our deliveries. We could not get from the outside the same interest in manufacturing these parts as we could from the Arrow Electric Company. We appealed to them for help, and they immediately came forward, and it enabled us to make deliveries from their automatic screw machines which were not as busy, within 24 hours

after receipt of the order, or at least deliveries commenced.

In 1927 and 1928 we also decided to combine the two porcelain plants under one management in one factory. We did not get very much economy out of this in dollars savings as we anticipated, owing to mismanagement during that year, and subsequently vast economies resulted out of this combination of these two porcelain plants which improved greatly our deliveries of porcelain, as well as the quality of the porcelain. I might enlarge on that just one second. When I say the quality 2258
—a piece of porcelain is just about the same as another piece, but the accuracy with which it is built means a great deal to us, whether the screw holes are exactly alike, or if there is any drifting. It is built with these pieces of steel going down clamping your mechanism to it, and it looks perfect, but you let it down and you take a pencil and tap it just slightly, and it will fly to pieces, because the material is under such a strain that the slightest jar like that will break it wide open; and that is what we mean when we say that the quality of our porcelain must be built to accuracy. I might also say that during that period there was a mis- 2259
management of our deliveries of our porcelain. We did not improve in dollar saving but our deliveries did improve.

In 1927 and 1928 plans were made to combine our automatic screw machine departments. The reason was due to the fact that the Hart & Hegeman Company were experiencing such a demand for parts to go in their switches that were made on automatic screw machines, and they were nowheres near equipped to take care of this demand. Their automatic screw machines were not suffi-

ciently large enough, and it was decided that the Hart & Hegeman Manufacturing Company could spend $75,000 in purchasing automatic screw machines, because we figured that in doing this we could supply Arrow all of their parts over and above their machines. However, after the end of 1928, when the second company started in, the second period, we went a step further and combined these departments, the Arrow and the Hart & Hegeman screw machine departments, which allowed a steady flow of material under one leadership. I be-
2261 lieve today, so far as the particular department is concerned, it is probably the best automatic screw machine shop in New England, because all of this machinery we bought was absolutely of the latest type. We got rid of our old machinery and put in the new improved type of machinery.

At the same time—now, this is the later period—starting in 1929 we combined, or rather, we started to combine our screw departments, this is the screw making department, and we have experienced good economies by so doing.

One more thing that took place which touches back to the bakelite: Bakelite was coming for-
2262 ward with very rapid strides. Some of the biggest volume items became highly competitive, and our methods of manufacturing those articles were such that we could not produce them or continue to produce them and make money with the tendency that prices had of going down, particularly on attachment plugs, and due to the resources of the two companies being pooled we were able to spend around $50,000 in the development of a bakelite—two automatic bakelite machines, which made our cost of production very low and allowed us to keep pace with the price condition in the market and still make something for us.

Now, during this latter period, there has been a tremendous amount of changes that have made it possible for vast economies. First, we combined our box-making departments. That is for paper boxes, and so forth. Second, all our insurance was gone over and we combined our policies, with the result of lower rates. We combined our entire trucking service, making it possible to eliminate certain expenses. Then, we combined our entire shipping rooms, with the result of a saving.

Then, the next was a revision of the indirect labor over all plants. In explanation of that, I 2264
would say this, that we had combined so many departments, and we had so many people that were indirect labor in those departments, that it was essential, and the only economic thing for us to do, was to revise that entire indirect labor, and it resulted in a tremendous saving.

We then, during this period, combined our entire accounting and costs systems, which resulted in very substantial savings.

Then, we designed for both plants machinery that would print and fill envelopes with screws at the same time. Some articles have to be sent with screws. We can't throw them loose in the 2265
box, because they might get lost, and we can't pack them with the article because of the breakage that might result, and this resulted in quite an economy in having a machine doing it, whereas before we had girls who put them in the envelopes.

Then there was the adoption by the Arrow plant of automatic screw-driving machines that had been developed by the Hart & Hegeman Company. All the screws were put in, and the girl with the automatic screw driver came down with it like this

and tightened the screws. That developed a tremendous economy.

Then we combined the entire purchasing and planning departments of both plants into one purchasing department and one planning department. The first naturally resulted into our being able to lower our inventory of raw material, because it wasn't necessary always to carry duplicate stocks, and it enabled us to purchase in larger quantities and get some economies there also.

Now, the combining of the planning department
2267 naturally went hand in glove with the purchasing department, because it allowed the planning department to look at one stock of raw material, taking it and using it for whatever it was adaptable, regardless of whether it was in the Hart & Hegeman or in the Arrow plant. Then, too, it enabled the planning department to call on machines if certain other machines were busy, and to issue orders to have the stuff made right there, and back and forth, one hand helping the other out, back and forth. It enabled them to use the resources of one plant if for any reason the other plant was crowded or temporarily incapacitated.

2268 Then came the combining of the engineering departments. The economies that were experienced were not so much in economies at first, as they were in allowing us to cover a very much broader field of experimenting, of designing, and in bringing out new articles for the trade. I believe that this will be verified, and it is said with all modesty, that it will be verified by anyone in the industry that the Arrow-Hart & Hegeman Company have brought out more new devices for the trade in the last three years than any other company in the business. It allowed the engineering departments to not con-

tinue to duplicate their efforts—I mean the Arrow on one thing and the Hart & Hegeman on the other. We had them work in unison, and that is bringing out the material that did not duplicate, so that we could bring out, in turn, a greater quantity of material for us to sell, we bearing in mind at all times that we have only one excuse to live, so far as the public is concerned, and that is the good that we do to the public. Of course, the only other reason that we have for living is to earn money for the stockholders of the company.

Then, a later development has taken place, which is now being experienced, and which has just come into effect when we combined the engineering department. 2270

We found this to be taking place: A great many of our tools and equipment were having to be repaired all the time, and we were spending a considerable sum of money more than was necessary on the repairing of machinery and equipment, due to the fact that neither company as formerly existed could have a repair gang in charge of repairing all machinery and equipment, and it had been done by relying on the tool room foreman sending a couple of toolmakers. When a foreman said, "This machine is out of repair," he would send a toolmaker down to see it, and they would spend most of the time there, and spend a quarter of a day doing it. That might have been licked if there had been enough repair work for a repair gang always taking care of it, and until we had, we could not really get our grips on that economy. That has not taken place yet. We estimate the saving to us—well, conservatively, between $25,000 to $50,000 this year. 2271

Those, in a general way, are what have taken place in the form of economies. Now, the combin-

ing of the engineering departments added further economies. They were constantly working on existing articles that we had been manufacturing, first, to make the article less expensive, so far as we were concerned, second, to improve the quality, and great strides have been made by our engineering department along that line. In a great many instances we were able to improve our quality and give the article to the public at the same price; in some instances to improve the quality and give it to the public at a lower price, and in some instances to
2273 improve our manufacturing, our costs of manufacturing, and give it to the public at a lower price.

Q. Do you want to go into the question of estimated savings in these economies? A. The estimated savings of these economies, as I have mentioned here as a group and as a whole, excluding the last one I mentioned, which has not really come to a realization, amount to approximately $500,000, based on an $8,000,000 sale.

Q. $500,000 per annum at that rate? A. Yes, per year at that rate. The general figures can be secured from the accounting department on that.

I will take first the pull socket. It was testified
2274 that we greatly improved the quality of our sockets. I did not mark this down as a quality improvement. We did improve the quality, but generally speaking the sockets as they existed before were practically the same as this, except that they would not last as long.

In 1927 we started with a price of $14.96, and in January 1, 1929, it was $13.30; on June 1, 1931, it was $11.80, a straight price reduction.

Q. That is an article— A. Where the quality remained, roughly speaking, the same.

2275

Q. And the price to the public has gone down in both of the periods? A. Yes.

Mr. Gross: May that be marked?

Mr. Haycraft: Is it the testimony of the witness that these economies that he has been talking about have resulted in this reduction in the price of these various articles now indicated on this paper, and the changes are not due to market conditions or competition?

The Witness: I will answer that in this way. It was through these economies that we were 2276
able to operate and make something on these articles for our company.

Competitive conditions did come in to bring the prices down, but if it had not been for the economies that had taken place in the amalgamation of the departments making these articles we never could have kept up with the competition.

By Mr. Haycraft:

Q. Were there any reductions in the cost of raw materials? A. There were some reductions in the cost price, but the percentage of the reduction in 2277
the cost of the materials would not keep pace with the percentage of reduction made here, and there were no reductions in the very large items in the making of these items.

Q. Your labor item remained the same? A. Remained the same.

Mr. Haycraft: Mr. Examiner, I have not objected to this testimony up to this point, principally because I realized that it is part of the

defense in the case that economies that might be realized resulted from the acquisition. I did not want to encumber the record with objections from time to time, but at this time it appears apparent that there is going to be considerable detail. The witness stated that he could not definitely say, of course, that these figures indicated here were due entirely to the economies, and competition and market prices enter into it, and for that reason it strikes me that not a great deal of weight should be given
2279 to this testimony, and therefore I object to it as incompetent, irrelevant and immaterial to the issues in this case.

Mr. Gross: If your Honor please, my learned friend took one of the competitors this forenoon and discussed with him the question of the improvement in quality in switches, attachment plugs, and so forth, and I submit that in view of the allegations and our answers, that we are entitled to show that what we have been able to accomplish by these corporate steps were several things: In the first place, in spite of falling prices we were able to put out better
2280 material and give a better article to the trade as a result of the economies to which Mr. Cook has already testified, amounting to approximately a half million dollars a year. We are going to show that in some instances we are putting out an equivalent article and are able to produce it so that we can sell it at a very much lower price. We are going to show in other cases that we can put out a very much better article at the same price as the more inferior article first put out. In other words, we are going to show that the public has not been

2281

damaged but has been benefited, and that we are passing a very much superior article, which we could not have done without the economies, to the public, due to the skill and the better development of our art as a result of being able to work together through these two manufacturing departments. Now, I submit that that is very important, and I am surprised that my learned friend is not willing that we should have an opportunity to show the Federal Trade Commission what we are doing.

2282

Mr. Haycraft: You will recall, Mr. Examiner, that when counsel for the respondent questioned the witness this morning with respect to the quality, I objected to it as incompetent, irrelevant and immaterial to the issues of this case, and that you overruled my objection and allowed the question to stand. Naturally, when it is in the record, it was my purpose to show its real value, and I cross-examined the witness to show that he did not know, and therefore could not testify to that, and my cross examination was to that purpose. I was not interested in bringing out the merits of the proposition; it was to show that he was not in a position to say that he was able to testify as he testified. I am not changing my position. I can see a number of exhibits here in the room, and I can see that there is going to be a considerable volume of testimony on this point, and I think it is incumbent upon me to renew my objection on the record to this line of examination.

2283

Mr. Gross: My learned friend objected this morning that the witness did not know about our policy.

Mr. Haycraft: That was not it. It was immaterial to the issues of the case.

Mr. Cross: Now we have a man who does know.

Mr. Haycraft: That doesn't change my original objection.

Examiner Reeves: Is it the purpose, Mr. Gross, to put in evidence a large number of these devices?

Mr. Gross: It is our purpose to offer in each of the respective schedules typical cases of
2285 mass production, showing switches, sockets, plugs, and so forth, something which the witness will say is a fair indication of mass production and what has been accomplished in these lines. I want to hold it down as far as I can, but I do want to bring into the record instances where an article was put out at a lower price, a better article at the same price, and in some cases a better article at a less price as a result of the economies which we have been able to effectuate as a result of what we have done.

Mr. Haycraft: He has admitted that some of
2286 these may be due to market conditions and other elements that enter into it, and therefore this is not a fair comparison. There are too many elements that enter into it.

The Witness: That happens to be the first article. The others will change around after that.

Examiner Reeves: As I recall it, counsel for the respondent was offering the device, to be identified by the witness, and counsel for the Commission is objecting?

Mr. Haycraft: Yes.

Examiner Reeves: The objection will be overruled, and the device described by the witness will be received in evidence as respondent's Exhibit 1.

(The device was thereupon received in evidence and marked "Respondent's Exhibit No. 1.")

Mr. Haycraft: Exception.

Q. Will you take the next one, please. A. The next one is the Keyless socket, which we classified here as the quality remaining the same and the price going down from $8.79 to $8.31 in 1929, to 2288
$7.54 in 1931.

Q. That price being per 100? A. Per 100.

On the slip that I have here, the first one, the pull socket, is catalogue No. 65250, and the second one, the Keyless socket, is 59482.

Mr. Haycraft: I wish the same objection to stand to the admission of these fixtures.

Examiner Reeves: It will be so noted in the record.

Mr. Haycraft: And exceptions to all rulings.

The Witness: The next one, No. 59480, the Key socket, the price went down from $10.69 2289
in 1927 to $9.79 in 1929, to $8.80 in 1931.

Q. Per 100 in each case? A. Yes.

Q. Are they all per 100? A. Yes, everything is per 100.

Mr. Gross: I offer these two in evidence.

Examiner Reeves: The second device, the Keyless socket, will be received in evidence and marked Respondent's Exhibit 2.

(The Keyless socket was thereupon received in evidence and marked "Respondent's Exhibit No. 2".)

Examiner Reeves: The last one offered will be received in evidence as Respondent's Exhibit 3.

(The key socket was thereupon received in evidence and marked "Respondent's Exhibit No. 3".)

The Witness: The next one is the pull candle socket. There are two here. The quality has
2291 been improved, very much improved, and the price has gone down.

Mr. Gross: Let us have the first one as No. 4-A and the other 4-B. I offer them in evidence.

Examiner Reeves: This will be received in evidence as Respondent's Exhibit 4-A.

(Pull candle socket received in evidence and marked "Respondent's Exhibit 4-A".)

The Witness: The price in 1927 was $30., in 1929 $20.90, and in 1931, $12.

Q. Will you indicate what the nature of the improvement is? A. This was made of porcelain
2292 (indicating), and it is very brittle.

Q. Are you talking of 4-A? A. Yes, 4-A. That is very brittle. Any porcelain in an article is subject to breakage, causing a tremendous loss in the field by the user of the material. Besides, it had a mechanism that is quite complicated, and the use of fibre in the covering up of the mechanism.

Q. The mechanism operating the switch? A. Yes, operating the socket. In 4-B the mechanism has been made by eliminating all porcelain with bakelite in which the mechanism operates. Not

only has the mechanism become very much simpler, but very much more positive, due to the fact that simplicity is the best thing to get positiveness of operation.

Incidentally, in making an article of bakelite, a great deal more accuracy can be secured than in making an article of porcelain, which is subject, in firing, to shrinkage.

Mr. Gross: I offer that in evidence.

Examiner Reeves: It will be received in evidence and marked Respondent's Exhibit 4-B.

(The article was thereupon received in evidence and marked "Respondent's Exhibit 4-B".) 2294

Q. Now, I will ask you, taking, for instance, 4-A and 4-B, whether these improvements in the mechanism and in the composition of the article are referable to the greater engineering efficiency and the economies to which you have referred as resulting from bringing the two companies together? A. Absolutely.

Q. Is that true of all the exhibits which you are about to put in? A. It is.

Q. You may proceed. 2295

By Mr. Haycraft:

Q. Would you also say that market conditions and competitive conditions have nothing to do with the lowering of the price?

Mr. Brown: He was speaking of quality there.

The Witness: Yes, I was. I was speaking of quality.

(The last question was read by the reporter.)

A. In these particular articles market conditions had something to do with the lowering of the price.

(Discussion off the record.)

BY MR. HAYCRAFT:

Q. Would that be true of the items that you have described up to this point? A. All items up to this point, if you are referring to market conditions as entering into competitive conditions and are compelled by raw materials. The competitive conditions in our field as of today make it such that we have to go down in prices on some of our items. To enable us to go down and come up with anything for our company it is necessary that our engineering department and our manufacturing department exercise a great many economies to enable us to do this. Competition in the electrical game today—it is filled with a great number of manufacturers who will pick up two or three articles only in our line; will get some draftsman to take our articles, detailing the parts; will then, in turn, get some tool-making concern to make tools for them, and will put out the article to the public at very much lower prices than what the article originally started at. To enable us to keep up with such competition we have to call on our engineering department to effect economies in design of our material, so that we, in turn, can come down on these articles and come out with something for our company. Such competition could be met by merely lowering the prices, and making on such a competitive con-

dition a lot of money for the company, but as we still think that we are originators in this game, we struggle for better and more economical designs. This is more clearly shown in exhibits 4-A and 4-B.

BY MR. GROSS:

Q. And will the same explanation apply, substantially the same, to the various exhibits which you are now offering? A. It will to all exhibits.

Q. That you are about to show? A. Yes. As far as the material cost in the manufacturing of these articles is concerned, whereas up to this time there 2300
has been a lowering in the price of brass or copper-content metal, whereas today the cost of copper is 8¼ cents, I doubt that hardly any manufacturer of any size working on copper-content metal would price it as low; due to the fact that a great many manufacturers would have large inventories of brass and bronze, which naturally would have to be disposed of first. At the present time the brass that we are working on is somewheres between 12 and 14 cents a pound, against the highest price of 24 cents. That is only a small percentage of the material contained in these articles, and the ratio of reduction in price is far greater than the per- 2301
centage or ratio that we show as a saving in our raw material. I might say that raw material such as porcelain—any saving that we have experienced in raw material is practically nil. Porcelain is largely labor, and very cheap raw material. It is nothing but clay, I mean.

The next one, No. 4007, is the Keyless Candle Socket, on which the price in 1927 was $8.50 a hundred, in 1929, $8.50 a hundred, and in 1931, $3.75 a hundred.

2302 *John R. Cook—Recalled—Direct.*

I might say, Mr. Haycraft, there, that the big reduction in that thing going that low is due to very fierce competition in the field. In fact, four or five of the known developing type of manufacturers presumably are at war with each other.

BY MR. BROWN:

Q. How about the quality of that device? A. The quality has improved. Formerly this piece (indicating) was a fibre.

2303 Q. What do you refer to by "this piece"? A. This piece (indicating).

Mr. Gross: I offer that in evidence.

Examiner Reeves: This device will be received in evidence and marked Respondent's Exhibit 5.

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 5".)

The Witness: The next article is No. 995, a Canopy Socket, or canopy receptacle, in which the quality has remained the same and the price has gone down, from 1927, $31.50, to 1929,

2304 $19.75, to 1931, $13.50.

Mr. Gross: I offer that in evidence.

Examiner Reeves: The device will be received in evidence and marked Respondent's Exhibit 6.

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 6".)

The Witness: The explanation of the extreme reduction is that originally this started off as a very small production item. The production

got up to a fairly sizable point to enable us to make economies and reduce the price. There are also some competitive conditions that forced that down.

The next is a receptacle—

Q. You might give the schedules, Mr. Cook. Are these six referable to one schedule? A. Yes. When I get through with Schedule B, I will say that covers Schedule B.

The next article is a receptacle, called, normally, a sign receptacle, or cleat receptacle. It is No. 50715. The price on June 1, 1931 was $4.50. 2306

Q. In the three periods? A. In the three periods, that is, October, 1927, it was $6.00, in 1929, $6.00, and in 1931, $4.50. The economies again were made possible by simplification.

BY MR. BROWN:

Q. As a result of your consolidation? A. Yes, they are all here.

Mr. Gross: I offer that, Mr. Examiner.

Examiner Reeves: This device will be received in evidence and marked Respondent's Exhibit 7. 2307

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 7".)

The Witness: The next one, No. 829, is a porcelain pull receptacle. The prices were, in 1927, $84.00, in 1929, $84.00, and on June 1, 1931, $79.00.

Mr. Gross: I offer that, Mr. Examiner.

Examiner Reeves: This will be received in evidence as Respondent's Exhibit 8.

2308

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 8".)

BY MR. BROWN:

Q. How about the quality? A. It has been improved very much. The next article, No. 43310, Pigtail Socket, which is used in construction work, the prices have gone from $10.00 in 1927, to $10.00 in 1929, to $7.00, in 1931. The quality of this article remains about the same. There is no large difference in the quality. We have increased our production that enabled us to work our cold-mold department machines in larger runs, and thereby effect economies.

2309

Mr. Gross: I offer that.

Examiner Reeves: This will be received in evidence as Respondent's Exhibit 9.

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 9".)

The Witness: The next one, No. 9366, Pigtail Porcelain Socket, the prices in 1927 was $10.80, in 1929, $10.80, and in 1931, $7.50.

2310

Mr. Gross: I offer that.

Examiner Reeves: It will be received as Respondent's Exhibit 10.

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 10".)

The Witness: The above material is Schedule B.

The next article, No. 1465, is a Composition Attachment Plug. In 1927 the price was $3.80, in 1929, $4.00, and in 1931, $3.00.

In conjunction with this plug, I might say it is really going out of existence. We have developed a bakelite plug, which is a far more improved article.

Mr. Gross: I offer these on the same number, 11-A and 11-B.

Examiner Reeves: These two will be received as Respondent's Exhibits 11-A and 11-B.

Mr. Gross: The bakelite plug is No. 1900?

The Witness: Yes. You can see by referring to that we are now selling the bakelite plug at a less price today than we sold the cold-mold in 1927. 2312

(Device No. 1465 was thereupon received in evidence and marked "Respondent's Exhibit 11-A".)

BY MR. GROSS:

Q. What is the price now on the bakelite? A. $3.42 per 100. You can see the difference in the construction. You have here the finding groove. In putting the plug into the old receptacle, you would nearly have to stand on your head to do it whereas in the bakelite you have a finding groove for finding it. 2313

Q. That finding groove is a development of this company? A. The finding groove as it exists today in this plug is a development of other companies, but they are not anywhere near as good.

(Device No. 1900 was thereupon received in evidence and marked "Respondent's Exhibit 11-B".)

The Witness: I am now showing two receptacles, cold-mold receptacle No. 1494, and bakelice receptacle No. 1913. The cold-molded re-

2314 *John R. Cook—Recalled—Direct.*

ceptacle is what we had in 1927, at which time we were highly developing the cold-mold department. The bakelite receptacle is a receptacle as of today, in 1913, which shows clearly the change in the art between these years, not only in the construction of the device itself, but in the material that is used. The cold-molded receptacle, you can see, is not as acceptable, and it contains fibre. It contains only one screw for wiring up one side. The bakelite is of the latest design, using bakelite throughout,
2315 containing four screws, two on each side, so that the receptacle can be wired and a short run wire without splicing can be made to some control switch, if necessary. The receptacle is what receives the attachment plug for a lamp or any other device that is put into it to receive the energy, the electric energy to run the device. You will also observe that in the new bakelite receptacle the same construction of the finding grooye is followed out.

Mr. Gross: I offer the cold-mold receptacle as No. 12-A and the bakelite as 12-B.

Examiner Reeves: The same will be received
2316 in evidence and marked Respondent's Exhibits 12-A and 12-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits Nos. 12-A and 12-B".)

The Witness: These articles, the last ones that I have mentioned, I might say, represent an improvement in quality that has been given to the public without additional charge, and the above exhibits, 11-A, 11-B, 12-A and 12-B, are in Schedule P.

The next article I will offer, will be receptacle No. 1109, and No. 7711. In 1927 the

price was $159.00, and in 1929 it was $105. That is when it was changed, so in June, 1931, we were offering the improved types for $90.

Q. What is that device that you offer? A. This device is for a receptacle and a pilot light. It is very often used in laundries, so that the light is lighted as soon as the attachment plug is put in here (indicating).

Q. To show that the current is on? A. Yes, the light shows up. In the beginning it was a very clumsy article. They had a bird cage stuck on it, 2318
and it was objectionable, because things struck it, and the whole thing would be wrecked inside here. It is very hard for the wireman to wire it. A big box was required, and made it more expensive. It was improved until No. 7711 was brought out. Competitive conditions did not make it necessary. The strides on this was due to economies and increasing our production. The main strides were made by improving the designs, so they could be made much more cheaply, to increase the demand: they are so much better.

Q. Will you explain the shallow box? A. The benefit of a shallow box is where, for instance, in 2319
New York City, the floor space is so very valuable, and they want all of their walls as near as possible to be two-inch partitions. It became necessary, and it is more increasingly necessary right now, to build devices so that they can go into a wallcase or a box no deeper than two inches, and the two-inch wallcase has become the standard wallcase or the most popular throughout the country on account of that, and the minute you make those cases deeper, it immediately runs up the cost of installation on the contractor; also, so his demand would

be for a shallow box. In other words, if we had continued to stick to the deep device, our jobbers would have absolutely gone over from our device to someone if they could have gotten one that had a device that would have gone into a two inch wall case. The type of plates on these devices have nothing to do with the popularity or utility of the device. Either device will take a brass or a bakelite plate, as desired.

Mr. Gross: I offer these, Mr. Examiner.

2321 Examiner Reeves: These devices will be received in evidence as Respondent's Exhibits 13-A and 13-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 13-A and 13-B".)

The Witness: The next two articles will be 1160, switch and bull's eye, and 7739, switch and bull's eye. The development of these two articles are about the same as the other one. It had a bird cage, which was objectionable on account of the breakage and a great deal of trouble, and it has been developed to the

2322 bull's eye, the red bull's eye, that does not protrude out from the wall. The prices of these articles have remained the same, although the quality itself has improved in the article. I might mention here also that the switch mechanism has been improved.

Mr. Gross: May I offer those?

Examiner Reeves: These will be received in evidence as Respondent's Exhibits 14-A and 14-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 14-A and 14-B").

The Witness: The last four come under Schedule H.

The next two articles are the ordinary wall switches, known as 8601 and 701, in which the quality has been greatly improved, and in which the manufacturing process has also been improved, allowing us really to put in a more costly mechanism in the switch at the same price. No. 8601 switch, as you can see, is a very much larger switch on its porcelain base, although adaptable for a two-inch wallcase, but it did not give as much wiring room around 2324
the switch as No. 701. You will also observe that No. 701 switch has a large ear, which can be taken off with a pair of pliers, but which, if left on, and by any chance in a wallcase there is a little something in behind the plaster, it would give the switch a bearing on the plaster without breaking all the plaster around the switch. You will see also that No. 701 is very much quieter in its operation than the other, which makes for a very more silent and more desirable switch.

Mr. Gross: We offer this, Mr. Examiner.

Examiner Reeves: This will be received as 2325
Respondent's Exhibits 15-A and 15-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 15-A and 15-B.")

The Witness: The next two articles are what are termed canopy pull switches Nos. 341 and 7743. These represent an improvement in design, and are lower priced. In January, 1929, the price was $37.50, and in June, 1931, the price was $35.00.

2326 *John R. Cook—Recalled—Direct.*

Q. Is that a new thing which you did not have in 1927? A. The Hart & Hegeman did not have it, and in tracing it back the Arrow had one, but I could not find—even in 1927 it was so obsolete and old that I could not find a sample. They had improved it in the meantime. In this article you will find that to wire it up you had to undo all this thing; you had to take all this mechanism out so as to get out the binding screws to wire it up.

Q. Referring to No. 341? A. Referring to No. 341, yes. The improved article is made of bakelite.
2327 It is not possible to get into the working mechanism, as it is with the other. All that is necessary is to take off a fibre piece and place it back by pressing down once where the fibre is holding it firmly in position. The mechanism of this device, you will find, is very much improved over the old one.

Mr. Gross: I offer those.

Examiner Reeves: These will be received in evidence as Respondent's Exhibits 16-A and 16-B.

(The articles were thereupon received in
2328 evidence and marked "Respondent's Exhibits 16-A and 16-B.")

The Witness: The next two articles are canopy turn switches Nos. 331 and 7775. These switches go under the ordinary wall bracket and under the lamps to turn off and on the canopies. You will observe that No. 331 is made of porcelain, that it has a porcelain base, whereas No. 7775 is made with a bakelite base. Also, in No. 7775, the wires come out at both ends, making it more convenient to wire. It is very much smaller in size, too. We have made economies in making this switch, which

has allowed us to pass it on to the public at a lower price. In 1929 the price was $11.97, and in 1931, the price was $8.50.

Q. A better article at a less price? A. Yes, a better article at a less price.

Mr. Gross: I offer these in evidence.

Examiner Reeves: These articles will be received in evidence as Respondent's Exhibits 17-A and 17-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 2330
17-A and 17-B.")

The Witness: The next two articles are bakelite plates on which there has been an improvement in quality and a lower price. They are plates 8983 and 9040. The appearance of the plates will speak for themselves. The prices were, in 1927, $8.78, in 1929, $7.00, and in 1931, $7.00.

Mr. Gross: I offer these, sir.

Examiner Reeves: They will be received in evidence as Respondent's Exhibits 18-A and 18-B.

(The articles were thereupon received in 2331
evidence and marked "Respondent's Exhibits 18-A and 18-B.")

Q. Are these still in the same schedule? A. Yes, sir. Those are all Schedule S, except the plates, and those are—15, 16 and 17 are S, and the plates are H.

The next two articles are sign receptacles 59108 and 7718. The only difference is in the style: the one is the old style. The quality has been slightly improved and the prices have been materially re-

2332 *John R. Cook—Recalled—Direct.*

duced. In 1927 the price was $10.60; in 1929 the price was $10.60, and on the new improved style, in 1931, the price was $4.84. There is nothing that can be said, except that by examining them you will see that we have eliminated the fish eye, the extra screw, and simplified the construction.

By Mr. Haycraft:

Q. Market conditions? A. The market conditions had something to do with the lower price, and I mean by that competitive conditions, but it
2333 would have been impossible to meet such conditions without tremendous economies in manufacture.

Mr. Gross: I offer those.

Examiner Reeves: They will be received in evidence as Respondent's Exhibits 19-A and 19-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 19-A and 19-B.")

The Witness: And those are Schedule B.

I now offer No. 8947 and 1561, the old and new style. The price for these Roto-power
2334 switches in 1927 was $17.96; in 1929, $17.96, and the new style was brought out at $11.50. In 1931 the price of both styles was $11.50. There was an improvement in quality and also in price.

By Mr. Gross:

Q. What are they used for? A. They are used for—many of them are used for power control. You will see that on the old type of switch a great deal of wiring space is used. Wiring space is very

precious to them, and this switch (indicating) reduces the space. In the lowering of this price I would say it is not influenced by competitive conditions, but entirely by improved methods and increasing our production which we were willing to pass on.

Mr. Gross: We offer those.

Examiner Reeves: They will be received as Respondent's Exhibits 20-A and 20-B.

By Mr. Brown:

2336

Q. Those are Schedule S? A. Yes.

(The article was thereupon received in evidence and marked "Respondent's Exhibits 20-A and 20-B.")

The Witness: The next switch is a small switch, No. 20510. The prices have been reduced and the quality has remained the same as when originally designed. In 1927 the price was $15.50; in 1929, $14.73, and in 1931, $10.93.

Mr. Gross: We offer this, sir.

Examiner Reeves: This will be received in evidence as Respondent's Exhibit 21. 2337

(The article was thereupon received in evidence and marked "Respondent's Exhibit 21".)

The Witness: I would like to say that the lowering of this price has been entirely due to economies. Although I first stated that there has been no improvement in this article, that is, no optical improvement, there has been an improvement in the mechanism that is entirely enclosed, and that makes it probably 50 per cent. longer life, more positive, so the switch

on the market today is really an improvement in quality without any competition. That is used for controlling small motors, hair clippers, and also used in yachts,—wherever a small control is desired.

(Discussion off the record.)

The Witness: The next article I offer is the radio switch for rheostats. Switch No. 20994-L is the switch as originally built in 1927 for rheostats. It occupied considerable room, and with the making of the midget inexpensive ra-

2339 dio sets of today, it was necessary for the radio manufacturers to have a switch that would not take up as much room as No. 20994-L. It was further necessary that they have a switch that would be lower in price and yet of high stability, and would be equally as good, and we developed volume control switch No. 80231, a model of which mounted to a rheostat I am offering. At the same time I am offering No. 80231 by itself as we actually build it. The prices of these articles in 1927, the price of the switch 20994-L, which was used for this work, was $15.00, which was lowered in 1929 to

2340 $14.26, which was lowered in 1931 to $9.97. No. 80231 reduced the price to $6.00.

In offering No. 20994-L, the switch attached to the rheostat is the switch that is operated by a pin from the rheostat, and is the part that we furnish.

Examiner Reeves: This will be received in evidence as Respondent's Exhibit 22-A.

(The article was thereupon received in evidence and marked "Respondent's Exhibit 22-A".)

2341

The Witness: I offer the model switch 80231, which is attached to the rheostat. The switch is the black portion attached to the back of the rheostat.

Mr. Gross: I offer that.

Examiner Reeves: This will be received as Respondent's Exhibit 22-B.

(The article was thereupon received in evidence and marked "Respondent's Exhibit 22-B".)

By Mr. Gross:

2342

Q. Will you offer as 22-C the actual switch itself? A. To make this perfectly clear, I offer switch No. 80231 alone, to show just the switch and its mechanism by itself.

Q. The lowering of the price there is due to what? A. The lowering of the price is due to the fact that to allow—to do our share in helping the radio manufacturer to produce an inexpensive radio it was necessary for us to work our engineering department in this development.

Q. It was not due to competitive conditions? A. No. I might say here that on article No. 80231 there is not a patentable feature on this switch, and undoubtedly within six months competition of some kind will arise in the field.

2343

Q. You mean by someone with no engineering skill? A. Just plain copying it, like a Chinese copy, so that when it comes in here we could not tell ours from theirs.

Mr. Gross: I offer the switch itself.

Examiner Reeves: This will be received in evidence as Respondent's Exhibit 22-C.

2344 *John R. Cook—Recalled—Direct.*

(The article was thereupon received in evidence and marked "Respondent's Exhibit 22-C".)

The Witness: I am offering now two switches at one time here, No. 8000, trigger switch, showing a slight improvement in quality and lowering in prices. In 1927 the price was $18.81; in 1929, $18.81, and in 1931 $17.91. The improvement in quality here is quite simple to see. We have lightened up the roller contract member of the switch and we have increased
2345 the diameter of the roller so that the switch would be more positive in its operation, and increasing the diameter of the roller, acting the same as the old lumber wheels on any lumber wagon going over a lumbering road. If there are any rough spots the roller will pass over them without being hung up. The price lowering here is due to improved methods of production, and not to competitive conditions. I could say on this they are patented devices that the company owns several patents on.

Mr. Gross: I offer these.

Examiner Reeves: They will be received as
2346 Respondent's Exhibits 23-A and 23-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 23-A and 23-B".)

The Witness: The next switch is No. 8700, 15 ampere switch, on which we have made a slight improvement in the form of contacts on the switch, having added to the later type a small phosphor bronze touching contact, to give the switch greater ability to carry overloads. The price of these articles has been reduced from $34.96½ in 1927 to $34.96½ in

1929, to $29.70 in 1931. The ability to do this was entirely due to improved methods of manufacturing and the consolidation of the department making these articles. It was not necessary to do this at all, as the article itself is a patented device.

By Mr. Gross:

Q. Is 15 amperes a fairly heavy load? A. Yes, fairly heavy. This switch is used largely, or was used largely, on hair-dryers, washing machines, and is used in places where a heavy load is required and 2348 where there is a small space to mount the switch.

Mr. Gross: I offer those.

Examiner Reeves: They will be received in evidence as Respondent's Exhibits 24-A and 24-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits Nos. 24-A and 24-B".)

The Witness: The next two switches I have here is a development made for the gas pump business in 1929. Prior to that time gasoline pumps had been using the ordinary house-wiring switch, which would not stand up, regardless of what manufacturer was making it. It wasn't made for automatic work, and after the pumps were installed the switches gave trouble and would have to be replaced, and the pumps were of no use whatsoever if the switch contact member failed. We constructed these two switches for these gas pumps, to be mounted in an iron fitting that was to be operated in a vapor-proof box. Switch No. 100006-G was the

2350 *John R. Cook—Recalled—Direct.*

first development and No. 100006-KA is the improved development. You will notice that the difference in these two switches is the rolling member and the contact arm, making the whole operation very much easier and less subject to abuse. Switch No. 100006-G are priced at $57.00 and switch No. 100006-KA at $50.00.

Q. All these are still per 100? A. Yes, all per 100.

I might say as to competition in this field, al-
2351 though there is no patentable feature, that the lowering of the price was due to improved methods in manufacturing, and not due to competition whatsoever, because so far no one has brought out a switch anywhere near like it in quality or in adaptability to the use that it is supposed to be put to.

Mr. Gross: I offer these.

Examiner Reeves: These will be received in evidence as Respondent's Exhibits 25-A and 25-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 25-A and 25-B".)

2352 The Witness: Here we have three panelboard switches, Nos. 3248, 8329 and 8686, representing three stages in the development of these switches, at the same time the lowering of the prices on these switches. They started in 1927 at $53.71, which price continued to 1929, and was lowered in 1931 to a price of $40.85. We were able to lower this price due to economies and increasing our production. You can readily see in the construction of the different switches the development of the art. You will

see the contact plates are very small here (indicating) and they increase in size until they get up to this size. If you will look at the mechanism, you will see how complicated its mechanism is.

Q. Referring to what? A. No. 8329, and how it compares with 8686. I might add for information that in the panelboard switch game, which these represent, we supply the independent panelboard manufacturers in the United States who make their own switches. There are 30 to 40 independent panelboard manufacturers that have no source of supply of switches except from ourselves. They have not sufficient money or tools to develop panelboard switches; nor do they have the volume to support a department. 2354

Mr. Gross: I offer these three, Mr. Examiner, as one number, A, B and C.

Examiner Reeves: They will be received as Respondent's Exhibits 26-A, 26-B and 26-C.

(The articles were thereupon received in evidence, marked "Respondent's Exhibits Nos. 26-A, 26-B and 26-C".)

The Witness: The next two articles that I will offer are switches Nos. 8391 and 7828, in which the quality has been materially improved and the prices remaining the same. You will observe that the contact members have been very much improved, increasing the ability to carry necessary loads, and also the operating mechanism has been much simplified, to make it a great deal more positive. 2355

2356 *John R. Cook—Recalled—Direct.*

Q. What does that carry? A. They carry 60 amperes, 250 volts. That is rated 3250, and this would be rated 6250. It is a higher-rated switch.

Q. What is the purpose of it? A. It is used for panel work, for branch circuits of high currents.

Another thing you must observe about this switch is that switch 8391 had a steel frame, so that if moisture came in and got between the steel frame and the bakelite installation it formed a path for the juice to go across, because this frame is grounded. It would start here and go down here and down
2357 here (indicating), whereas on the new type we have eliminated entirely the steel back, making it entirely bakelite, to prevent this occurrence. That also applies to these other switches.

Q. The last three? A. Yes.

Mr Gross: I offer these.

Examiner Reeves: They will be received as Respondent's Exhibits 27-A and 27-B.

(The articles were thereupon received in evidence and marked "Respondent's Exhibits 27-A and 27-B".)

The Witness: I wish to offer as representing
2358 the skill of our engineering department, and to show to the extent that we have gone in our bakelite department, a panel—a bakelite panel unit, representing one of four or five different panel units we have built for the independent panelboard manufacturers, so that their product could be kept up to date and so that they could meet competition in the field in the pursuit of their business. It will be wholly impossible for any one of them to make the investment in bakelite molds or to have the volume to support such an investment. The tools for

these units are very expensive. It is a development that had to be made, and a very large chance had to be taken by the company that the article would be successful. It is today without competition, and our price in 1929 was $3.09 a piece per unit, not a hundred in this case, but for each, including switches and all connections. They are put in a box, and one is lined up right after another. They are turned upside down, and this whole thing is put in a box, and the main line is run up from the bottom of the box. They may have six or ten of 2360
them here, and they all compose different circuits. The price in January, 1929, when this was brought out, was $3.09.

Q. A piece? A. A piece, and lowered to $2.64 by January 1, 1931, and without competition. I might say that originally we put the price high because we had no idea of how many we would sell. When we found that our volume was fairly large we could pass on the saving to these users.

Mr. Gross: I offer this.

Examiner Reeves: It will be received in evidence as Respondent's Exhibit 28. 2361

(The article was thereupon received in evidence and marked "Respondent's Exhibit No. 28".)

Q. Would these improvements represented by these 28 exhibits have come along or have been so extensive if the engineering departments and resources of the two companies had not been brought together? A. No, they would not. In the first place, if the engineering department had not been

thrown together, we could have never fully developed into a hard-hitting engineering organization as we are today. In other words, we can have engineers concentrate on one particular type of work, and another engineer concentrate on another type of work, and so on down the line. Now, if the companies had been separated, two engineers or one engineer would have to devote themselves to different types of work, and we could never have had specialists in our engineering department. For instance, today we have engineers who work entirely
2363 on development work, on imaginary, imagining new types and designs; we have engineers entirely on trouble; that is, some trouble develops in an article; we have engineers entirely on the building of tools, and we have an engineer whose duty it is to see that the business and contact with the sales department is properly taken care of, and he is more or less our business engineer. Neither the Hart & Hegeman Company nor the Arrow Company would have taken the chances of taking up such development, if they had not the resources whereby they could take the chances. In other words, we have more or less made the engineering department stand
2364 on its own feet, and we are perfectly willing to take chances on future developments, even though among those there are failures.

Q. Are these 28 exhibits, with their companion parts, fair examples of the savings which you have made on the mass production items of the various schedules, B, P, H and S? A. They are, but they don't anywhere near cover the entire—

Q. But they are fair examples? A. Yes.

Q. They are not extraordinary instances, but a fair cross-section of the mass production work? A. Yes.

Examiner Reeves: The hearing will be adjourned to 10 o'clock tomorrow, June 18th, at the same place.

(Whereupon, at 5:00 P. M., June 17, 1931, the hearing in the above-entitled matter was adjourned until 10 A. M., June 18, 1931, at the same place.)

Conference Room, Arrow-Hart & Hegeman Electric Company, 103 Hawthorne St., Hartford, Conn.

2366

June 18, 1931.

Met pursuant to adjournment, 10 A. M.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

E. H. HAYCRAFT, Attorney for the Federal Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of Gross, Hyde & Williams, 49 Pearl Street, Hartford, Conn., Attorneys for the Respondent.

2367

PROCEEDINGS.

JOHN R. COOK was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION (Cont.) BY MR. GROSS:

Q. You put in, Mr. Cook, some 28 or more exhibits showing in many instances considerable improvements which have gone into mass production in the

2368 last few years. Will you indicate how these, before they reach production, are carried on, whether extensively carried over a period of months or whether they are rapid developments generally. A. Why, in the planning of every economy and every new article, the rapidity with which your plans will be consummated into the finished article is a variable quantity; sometimes very long and sometimes with a great deal of speed. It depends entirely upon the ability of the engineers to conceive and then the factory to execute the conception. A
2369 great many of the economies that I have shown there were started back in 1927. A number of them were not consummated until 1928, and some of them not until 1929. If I may digress for a moment: Here is a circuit-breaker. There is a tremendous demand in the field today for a circuit-breaker. I might say that a circuit-breaker is a switch that will stand a given load, and will stand a given overload for a short period of time, but if the overload continues, it will automatically snap off, and replaces fuses. It is used for the protection of motors, and also for the protection of all lamps and lighting loads. Now, that article has
2370 been worked on four years. We have any number of models. We think we have it about perfected. In my opinion it is about ready to be launched, but before we could get the final O. K. on it, Mr. Guett sailed for Europe, and that has delayed it again. We have all kinds of delays that enter into the development of material and in the making of economies such as that. Another thing that delays us a great deal is the fact that although a man might conceive making this particular article, it is whether it is workable and salable, and another engineer has to conceive the tools; whether it can be made

economically. A lot of these articles were started back in 1927 and 1928, but could not bring them to a head until a year or a year and a half, and sometimes two years later.

Q. What is the amount which was spent by this company, for instance, last year on tools for new developments, approximately? A. Approximately $250,000. I think it is a little higher than that, but that is a safe figure to state.

Q. You testified that this combined engineering ability of the two companies has allowed the two companies and then the two divisions to make large 2372
economies and to put out better articles for the benefit of the public. What effect upon the competition of the two companies and the two divisions did that consolidation of engineering abilities in these economies have?

Mr. Haycraft: That is objected to as calling for a conclusion of the witness.

Mr. Gross: Bear in mind that Mr. Cook has testified before, on previous testimony, when he was on for the Commission, that he is the general manager, and that one of his duties has been to stimulate the ingenuity and inven- 2373
tive genius of this department. If anybody knows, he knows. How five gentlemen in Washington can determine better than he, I don't know.

Mr. Haycraft: That is the duty of the five gentlemen.

Mr. Gross: I don't know of any court that does not want help that will enable them to form a conclusion.

Examiner Reeves: I think the objection will be sustained, as to the question in that form.

2374 *John R. Cook—Recalled—Direct.*

Mr. Gross: Will your Honor note an exception?

Examiner Reeves: An exception may be noted.

Q. Has the combination of the engineering ability of the two companies while they were operating as two companies and of the two divisions while they were operating as two divisions in any way lessened competition between those two companies and those two divisions in their sales effort?

2375

Mr. Haycraft: The same objection.

Examiner Reeves: The objection will be sustained. I think, Mr. Gross, it would be better if you would inquire from the witness what the effect has been and let him give a picture from which the Commission might draw a conclusion.

Q. What effect on the sales effort of the two companies, and later on the two divisions, did this combination of the engineering ability of the two companies, and later on these two divisions, have? A. Why, starting back in 1927, we will have to look

2376 at the picture of the two companies. The Hart & Hegeman Company had a higher supply of switches that were existing on the market. Their receptacles, plug materials, and sockets were not the same class. They were really—I won't say cheap material or inferior material, but their standing was not the same in the field. Their acceptance was far different. The Arrow Electric Company, who primarily started as a switch concern, had built up their reputation in the last ten years before the holding company was formed on sockets and on re-

ceptacles and plugs. Their switches and switch development was—I won't say second grade, but not of the same class. They were not recognized as high-class switch manufacturers.

The first move made in 1927 was that the Arrow Electric Company made for the Hart & Hegeman Manufacturing Company and sold to the Hart & Hegeman Manufacturing Company, sockets, receptacles, and plugs, which at that time, I think it has been previously testified, the Hart & Hegeman Company were losing money on. They were made for them so that Hart & Hegeman could make a 2378
profit on them. In turn the Hart & Hegeman Company sold to the Arrow plates. They also, through the medium of Mr. Guett and some of his engineers of the Hart & Hegeman Company looked over all of their switch construction and design, with suggestions of changes to be made, and any new articles had to pass under the scrutiny of Mr. Guett before they could be finally manufactured by the Arrow. Immediately the Hart & Hegeman sales organization was given a line of high-grade sockets and receptacles, with which they could go out and compete for business. The Arrow Electric Company, in turn, were given a line of high-grade 2379
switches with which they could go out and compete.

Now, the effect was this: You had two organizations fighting for the business, and it put a great deal of zest into the Arrow man to be able to offer a switch that was second to none in the field, and it put a great deal of zest into the Hart & Hegeman man to be able to offer a high-grade line of sockets, receptacles and plugs, and their ability to fight very much increased not only the fight with each other for the business, but to fight all competition.

2380 Q. What, then, was the prime motive which caused these improvements to be made in these sample switches which you indicated by these 28 or more switches?

Mr. Haycraft: That is calling for the intention or motive on the part of the respondent. It is incompetent, irrelevant and immaterial to the issues in this case.

Examiner Reeves: Objection overruled.

2381 A. The prime motive in bringing out this material and making a great many of the improvements such as we have had made,—Motive No. 1 was a motive to make economies in the manufacturing, so that we could either be in a better shape to compete and still maintain a profit, if our profit went down, or to make more profit on a given article. There is a further motive, which really was involved in the development and in the improvement of the articles and the bringing out of new articles, which was this: The position of these two companies in the field had to be maintained. I have to digress here a second, Mr. Haycraft: The way of merchandising

2382 our material was really an impression on the jobber and the trade at large that we created. Now, we could put on a half-dozen jobbers in any given place, but to move the material off his shelves is another problem. We had to create a preference for Arrow material, a preference for Hart & Hegeman material in the field. This preference is created, first, by the specifying engineer, the architect, and even by the contractor, creating a demand on the jobber. Now, if we have got the reputation, which I think we have, of being a pioneering company, a company that is bringing out new material

of the highest quality, immediately we create in the mind of the public a desire to use that company's material, and we create in the mind of the jobber a desire to handle that company's material, because he is getting a demand for it, and it is the material that he gets a demand for that he is most anxious to handle. That is a case of just plain business sense. If he can get a greater demand for Arrow material he will handle it; he would prefer to handle it, because he had to do less selling. The amount of wiring devices—I think this can be verified by statistics which I have seen—that the jobber handles is about 7 per cent. of his total sales. 2384

Q. You mean 7 per cent. of the sales of the jobber of all his line in wiring, cable and pipe? A. Yes, and conduit—everything. That is an electrical jobber, of course.

Q. Is the margin closer on the turnover of electrical wiring devices in a jobber's store as compared with most of his other lines? A. That generally speaking it is; the margin is closer. It may vary—for instance, on the Pacific Coast they have a larger margin than they do in New York, but that is governed largely by local conditions. Generally speaking it is.

2385

Q. Does that itself require greater promotional effort to the ultimate consumer on your part because of what you get from the jobber on that particular line? A. That is the main reason. If a jobber could make around 11 per cent. on our material he would spend much more sales effort. However, there are a great number of independent manufacturers who will go right to the contractor and sell this material for less than the jobber can afford to sell it. That brings the jobber's profits down. On high-grade material the jobber depends

on the fact that he can get more himself than the independent manufacturer can on a lower grade of material. For instance, we make a 30-ampere nitrogen lamp switch and duplex receptacle, and a fan hanger. The contractor can only get those from the jobber, because the independent manufacturers do not pioneer anything, and at least the jobber will have two or three things in which he does not have to compete with them.

Q. In the examination by the attorney for the Commission, I think of one or two jobbers, and then
2387 I think of one of our competitors, the question was asked as to whether or not there were any articles now put out by the new respondent which carried as a brand "Arrow-H. & H.", instead of the separate brand from the separate divisions. Will you state how extensively that is the fact? A. That has occurred, to the best of my knowledge and belief, only on two articles; one is an attachment plug, which is the ordinary competitive attachment plug. When we speak of plug material—we have many, many different kinds of plugs. There are quality items and sell for special purposes in small lots, but we have one standard competitive plug that is sold
2388 and put on any device that plugs into one of these receptacles. In the molds that make those the manufacturer's name ordinarily does not appear; in a great many you can't tell, and it matters very little to the trade at large whether they use this company's attachment plug or someone else's attachment plug. The only difference in quality is a bakelite attachment plug and a cold-mold attachment plug. They are all made to certain standards, and they are all very much alike, and the price condition enters slightly into the sale of it, but the company doesn't care and the ordinary user doesn't

care whose plug they use, so that article was put under the Arrow-H. & H. name. The underwriters require us to stamp our name on the article, and we stamped the twin name on that particular one because it would not matter who was selling the attachment plug. There isn't so much of the element of quality that enters into it.

Q. About as much as good will as in a clothespin? A. Yes. The other article, the motor switch, that was put out originally by the appliance department—

Q. Of the new respondent. A. —about two years ago, yes, and the idea was to sell it for machinery, to manufacturers for installment on their machinery, and the idea came to us that we could sell that particular article in the jobbing field, and the name plate on it happened to be Arrow-Hart & Hegeman, and the decision came about the first part of the year. 2390

Q. The fact that you put those two isolated examples out with the mark "Arrow-H. & H.", whether that is indicative of a change in policy, to put one brand on all your business?

Mr. Haycraft: That is objected to.

Mr. Gross: If your Honor please, that is the question he went into yesterday with his witnesses, as to change of policy, and he put great stress on it. I am entitled by this gentleman to indicate whether there was any change of policy. 2391

Mr. Haycraft: Of course my inquiry was to determine the extent of his knowledge of the question he was apparently trying to elaborate on, and which was brought in by counsel for the respondent over the objection of counsel for

2392 *John R. Cook—Recalled—Direct.*

the Commission. That does not make that matter an issue.

Mr. Gross: He asked gentlemen in the trade, and he asked our competitors, questions which would lead the Commission to believe that there was a change. Now, I am coming right back to headquarters, and I am entitled to ask this gentleman, and I claim the question.

Examiner Reeves: I can't get away from the feeling that this is merely asking for a conclusion of the witness.

2393 Mr. Gross: It is a question whether it was a change of policy. Who determines policy?

Examiner Reeves: Why don't you have him state what the policy was originally and then delineate any changes, if any?

Q. When the old respondent was formed, it has been testified, the two brands were continued on separate articles, and also at the time the new respondent was formed the two brands were marketed through two divisions. Has there been any change in policy with reference to maintaining the two brands? A. There has not been.

2394 Q. Is there any contemplated on your part as general manager of this company? A. There is not.

Q. I show you a record book and ask you what that book is? A. This is a record book covering the minutes of the Board of Directors and the stockholders' meetings of the H. & H. Electric Company.

Mr. Gross: May that be marked for identification?

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Examiner Reeves: The book may be marked Respondent's Exhibit 29 for identification, with leave granted to withdraw the exhibit.

(The book referred to was thereupon marked "Respondent's Exhibit No. 29 for identification".)

Q. Were you one of the incorporators of this company? A. Yes.

Q. And the temporary clerk of the organization meeting? A. I was.

Q. And a director? A. I was.

Q. And secretary? A. I was.

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Q. I show you Exhibit H attached to the answer of the Arrow-Hart & Hegeman Electric Company to the supplemental complaint, and ask you whether you know of your own knowledge that Exhibit H is an exact copy of everything that is in the record book of the H. & H. Electric Company which has just been identified as Respondent's Exhibit 29? A. It is.

Mr. Gross: I ask, Mr. Examiner, if your Honor approves, that Exhibit H, attached to our answer, may be marked as Respondent's Exhibit 29 and made a part of the evidence in the case, rather than have the official book go into the files of the Commission. Is that satisfactory, Mr. Haycraft?

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Mr. Haycraft: Yes, that is all right.

Examiner Reeves: The record book heretofore identified as Respondent's Exhibit 29 may be withdrawn, and there may be substituted in lieu thereof the papers constituting Exhibit H of the answer of the new respondent to the supplemental complaint, which will be received in evidence as Exhibit 29.

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(The document was thereupon received in evidence and marked "Respondent's Exhibit No. 29".)

Q. You were present at each of the meetings of the incorporators, stockholders or directors? A. I was.

Q. As temporary clerk and secretary of that corporation, I ask you whether that record book contains a record of every corporate act of the company? A. It does.

2399 Q. And of every agreement made or obligation undertaken by that corporation? A. It does.

Mr. Gross: You may inquire.

CROSS EXAMINATION BY MR. HAYCRAFT:

Q. When did you first become associated with the Hart & Hegeman Manufacturing Company? A. About 12 years ago.

Q. In what capacity? A. At that time I came in the capacity of assistant to the service manager.

Q. What were your duties? A. They were to see that the customers received their shipments in
2400 prompt order. If I may digress here: The Hart & Hegeman Manufacturing Company had a very big production system, or planning department, and I practically had to run the planning department, not officially known as that, but I had to be right there and make the plans and get out the merchandise.

Q. How long were you assistant manager? A. I would say that lasted a year and a half or two years, and then I was service manager.

Q. What were your duties then? A. Exactly the same.

Q. To see to it that the products were gotten out? A. Yes, at that time.

Q. How long did you continue in that capacity? A. I continued in that capacity—I might digress here again—the work with the production department largely carried me into the engineering department, on account of trouble in production, and I then commenced to get thoroughly acquainted, not only with the production all through the factory, but also in the engineering end of the business. I 2402
carried on in that capacity, and we commenced to work with the engineering department. I commenced to get the idea—and Mr. Guett would let me work with him on certain things in envisioning what could be sold and what could be brought out, and I drifted away. Although the service was still under me, within two or three years I wasn't doing any service work. I was spending my time on planning out some new things that we could build so that we could increase our sales and build up our Hart & Hegeman name among the jobbers.

Q. When was it that you made this connection with Mr. Guett? A. I would say three or four 2403
years after I first entered.

Q. About 1922 or 1923? A. About 1922 or 1923.

Q. As time went on how did your work develop? A. As time went on—naturally the Hart & Hegeman line business was strictly a jobbing line business. This original development that I was working on and playing with was strictly for the jobbing end, and my next phase of it was—naturally the service end brought me in contact with the sales end of the business, and then at that time—I would say about four years, at the same time I was making

contact with Mr. Guett, I asked Mr. Morris' permission on certain ideas on the jobbing business, and to conduct experiments on these ideas.

Q. What were those ideas? A. It was to give these customers a better service. I mean talking to the jobbers and to the contractors and specifying people, creating a demand for Hart & Hegeman merchandise, and when that demand was created, to show these distributors that the demand existed, and to get them to handle our line. What actually took place was that a great many handled Hart &
2405 Hegeman on a few of their switches, and they wouldn't handle receptacles or sockets, and so forth. There was an effort to get them to handle the line more completely.

Q. What did you do along that line? A. Well, to give you an idea, large buildings were being built in Hartford, like the Connecticut General, or the Connecticut Mutual, and I would go and see their engineers on it, or some official in charge of their construction work, and I used all the persuasion I could; that we were a Connecticut concern, tell them of the quality of our goods; and then I would have to see the designing engineer and architect,
2406 and then I would see the contractors that were doing the job, and I would try to cooperate and work with them on it, and then if the order came through, and contractor A was using the Hart & Hegeman material on this particular job, I would go to the jobber and say so-and-so has got the job, with Hart & Hegeman specified. "Get on the job and go after it".

Q. Did you, during this period of time, have other men go out and do the same thing in other places? A. Yes, they were doing it, but the idea—they were doing it not quite in the same manner. A great

many of our men were spending a part of the day in trying to convince the contractors that they should buy, and to buy from so-and-so jobber, but this took another branch; it is more intensive work; to see what could be built up. I will give you what I am driving at there. The Graybar Company opened a branch here. Although they were distributors of ours we were at least the third line that they handled. It was convincing to them to create a demand among the contractors so that it would be necessary for them to put in our material in their stock.

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Q. That would be necessary pretty nearly always where a jobber of that size was in business, to create some such demand? A. Yes, it is alway necessary to create a demand for the jobber. If you don't, the jobber will throw your line out and handle somebody else's.

Q. I believe you testified that your sockets were made over in Philadelphia? A. That is correct.

Q. And you had some difficulty in keeping up the standard. Did you do any work on that yourself? A. No, the sockets—Mr. Paiste was still running the Paist factory. Mr. Paiste was a very good engineer, as far as making an original model, but

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was not a good manufacturer, and he could make in the tool room or the model room a beautifully-working model, but he was not a practical manufacturer. He could not keep up with the details. At one time Mr. Morris wanted me to go down to Philadelphia to see if I could do anything with it, but I turned it down. I was very positive on it, that I did not care to go down there.

Q. Did you have anything in the way of utilizing bakelite prior to October, 1927? A. I can't answer that positively. If we did it was in a very small

and minor way. I believe the only thing that we used in bakelite material—we started a radio parts department, and we bought bakelite from the Hoosick Falls Company, and we bought some bakelite plates. They were just entering the field; but it was a very small business at that time.

Q. Prior to October, 1927, and during this time that you cooperated with Mr. Guett; what were some of the leading new devices that you brought out as a result of your work? A. Well, at that time we made several improvements on our switches.
2411 Prior to that time the push-button switch was the only thing that was used—I mean the biggest seller—in this country, and we brought out a toggle switch with a metal lever, and we exploited that as a new article, and then about a year or a year and a half after that we found that the demand was for a composition lever, and we made that. Both of these switches originally were deep switches; they wouldn't go into a two-inch wallcase, so we started in to make a two-inch toggle switch, which was made—that was the development up to that time. We made other developments, in the rotary switches. There seemed to be a demand for
2412 rotary motor switches for two-phase currents, where it is necessary to have four connections and eight binding posts, and a great many of that nature were not commonly carried by competitive companies. We made a great many of those. Mr. Guett, being a man who was more a mechanical and designing genius, was not apt always to get the outside point of view as to how articles should be built and the requirements that were put on them, and it was necessary for someone to get together such specifications and paint the picture to Mr. Guett, so that his enthusiasm would be aroused to build switches

and other wiring devices to meet such specifications and requirements.

Q. Then wasn't it your duty to superintend mass production of the articles so they could be made commercially possible? A. Only indirectly. I talked a great many things over with Mr. Guett, but his knowledge at that time was far greater than mine. We worked along this line; I would get a particular switch and we would figure that if we could build that for 20 cents and make a profit by making it in 25,000 lots—then we would meet the sales angle—and this is a hypothetical case—so 2414
that if we could make it at 16 cents we could sell twice as many, and it could be useful in a great many places where it could not be useful at 20 cents; naturally, also, different tools had to be set up to make them, and I worked with Mr. Guett along such lines, but so far as the designing of the tools that would make them was concerned, on that I wasn't an expert.

Q. He was? A. He was, yes.

Q. Prior to October, 1927, were you in close enough touch with the production end of the Arrow Electric Company to be acquainted with the devices that they brought out? A. I was acquainted with 2415
the devices they brought out and I had been in their plant, but I was not acquainted with their mass production methods.

Q. And who had charge of their production at that time? A. I presume at that time Mr. Alley had charge, and Mr. Benjamin Perkins was the leader in it.

Q. What was the nature of the devices that they brought out? A. They were always pioneers in bringing out new sockets, and also they were pioneers in bringing out a competitive attachment

plug. Prior to that period the attachment plugs had sold as high as 9 cents a piece, and they were of expensive construction, and they brought out a very inexpensive one, and if I remember correctly, that was the first drop in the price, when they brought it out at that time, a drop from 9 to 5 cents.

Q. How long ago was that, about? A. I would say, offhand, six or seven years ago. They also were the pioneers—the Arrow Electric Company—in bringing out side-wiring receptacles. All recep-
2417 tacles had very expensive contacts, very expensive molded parts, and they brought out a receptacle where all the parts were held together with only one rivet through the center, and it was less expensive. They went into mass production, and that was about six years ago, if the other was seven, and naturally they made a tremendous impression on the trade at large by bringing out these articles.

Q. Your mass production was on what particular items? A. Our mass production was mainly on switches.

Q. And the Paiste Company made all your socket material? A. Yes. You see, we made our money
2418 in Hart & Hegeman on the one hand, and Paiste was losing on the other.

Q. Now, when was it that you made that change—just how was that brought about, the Paiste over to Arrow? That is, how did you get rid of Paiste? A. When the holding company was formed, we naturally cast around to find out what items we were losing money on in Hart & Hegeman, and it was on the socket and plug line that we were losing money. That was the first thing we realized.

Q. Why was it that you just thought of it at that time? A. Because if we had thought of it

heretofore—the reason we did at that time, if we had done it before the result would have been this: We would give our business to some company who would have been interested in our business so far as the business was concerned, but if things picked up, and they weren't interested—well, you can very readily see that we would be quite cautious about the company making our sockets.

Q. You did not want to be placed in a position where the supply would be cut off? A. That is the exact answer.

Q. As I understand it, from what transpired, what happened was the Arrow people bought out the Paiste plant? A. They bought the assets of the Paiste Company. 2420

Q. Wasn't there real estate? A. Yes.

Q. What happened to the real estate? A. It is still held by us.

Q. What interest did you have in the plant at that time? A. We owned it.

Q. The Hart & Hegeman? A. Yes.

Q. And Mr. Paiste was running it? A. Yes, he and Mr. Eaton. Mr. Eaton was his assistant.

Q. The question that came to my mind is, you had to displace Mr. Paiste, and you decided to do so? A. Yes. I didn't; the Hart & Hegeman Company. 2421

Q. The corporation? A. Yes.

Q. Did you sit on any of the negotiations as to the plans that were made? A. I did not.

Q. Mr. Grier and Mr. Williams handled that? A. Yes.

Q. Thereafter, then, am I correct in assuming, that the manufacturing of sockets, receptacles and plugs, that bore the H. & H. trademark were manufactured under the supervision of Mr. Alley of the

Arrow Company? A. They were manufactured by the Arrow Company and under the supervision of Mr. Alley, and were purchased by the Hart & Hegeman Company from the Arrow Company.

Q. At a flat price, at an agreed price? A. Yes.

Q. Can you give us, in some detail, as to what Mr. Guett and yourself did with respect to the Arrow switch construction and design in 1927 and 1928? A. The first thing that was done on the design was that Mr. Grier brought Mr. Guett in to look over the design of all Arrow switches, which
2423 in itself is quite a long job. He would take one switch today, and he would give a great deal of study to it to see whether by making some minor change it could be improved or any economy could be exercised. The first positive thing that I think he did in helping them on the design was on the little handle on their tumbler switches, which is partly composition and partly metal. The Hart & Hegeman had experienced some trouble on that five or six years ago, and they saw the Arrow problem right away. In going over the designs of their material he would show them whereby any little change they could probably get twice as much life
2424 out of the device, and they went generally through the Arrow switches.

Q. So that within a short period of time, would you say, that the Arrow line of switches was as good as the Hart & Hegeman line? A. It depends on what you call a short period of time. I don't think the Arrow switches came up to as good as the Hart & Hegeman for three or four years, but these switches—the tumbler switches, were brought up—that transpired in 1927 or 1928, and their development went right along, but others could not be put into effect although they were thought of

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and planned out. What I have reference to,—let us take the canopy switch that I showed you yesterday. That had been thought out by probably Mr. Guett, oh, I would say two and a half years ago, but it wasn't put into production until about six months ago. I am referring to Exhibit 16-B.

Q. Did you continue your campaign, you might say, of intensifying your effort on educating and soliciting from the contractors, builders and architects? A. Individually and personally?

Q. No, under your direction. A. There was a lapse there in my continuing my effort. This is prior to 1927 that you are talking about?

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Q. I thought I brought you up to that. A. Well, there is a lapse there, where I spent my major time in 1927 on the appliance end of the business.

Q. Did that work go on? A. Yes.

Q. Under whose direction? A. Mr. Everest, and Mr. Williams—Mr. Everest took it up, and Mr. Williams carried it through with him.

Q. Was anything done along that line in the Arrow organization? A. Yes. They were concentrating largely, however, upon the socket users, and we were concentrating largely upon the switch users.

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Q. Wouldn't they be the same? A. They would not. Switch users of high-class material are generally the larger contractors, doing the wiring for the larger buildings.

Q. Do they use receptacles and sockets? A. Very few sockets.

Q. How do you explain that? A. Because in a building the people that would install the fixtures were usually fixture manufacturers. The difference between a fixture manufacturer and small contractor was hard to tell, except when you get in where

2428 you have a large fixture manufacturer who sold the contractor, so the Arrow Company in their desire to sell sockets and attachment plugs were concentrating on the smaller contractors who had a lot of wired fixtures and sold fixtures.

Q. Did they continue their efforts during that 15-months period? A. The Arrow Company had given up the sockets, and we started right after the smaller contractors, and they also started for the larger contractors and specified work, because their switches were being improved. Of course, after
2429 that period the concentration then became greater, because as the two lines were more improved, both sales departments would go out to both classes of trade more readily than heretofore. It was folly for the Hart & Hegeman salesman to sell a lot of his Paiste sockets, because a great many times the result was that we had to take the sockets back. We were wasting our time in trying to sell our material.

Q. Was it true that generally throughout the country the Hart & Hegeman line was handled by a better grade of contractors and the Arrow line probably by the next best? A. The contractor that
2430 does the wiring of a large building is usually a larger contractor, and on account of the nature of his work, is usually in a better financial position. The Hart & Hegeman line would be sold to that type; whereas the fixture manufacturer, or the fixture contractor was usually a smaller contractor, and one that usually did not have as much financial backing as the contractor that did the large building jobs. That is generally true.

Q. In both instances they received their supply of goods through the jobbers? A. Yes.

Q. And the result was, I believe you testified, that during that 15-months period, and later, the Arrow salesman was able to offer a better line of switches and the Hart & Hegeman a better line of sockets? A. And receptacles and plugs, yes.

Q. Are you acquainted with the general sales results of these two companies and the two divisions subsequent to October, 1927, from the point of volume? A. Generally.

Q. Did the two divisions keep pace with each other? A. They were practically the same.

Q. In 1927, comparing the sales in 1927 with 2432
subsequent years, the domestic sales, of the Hart & Hegeman Company and the Arrow Company, and later the Hart & Hegeman Division and the Arrow Division, did they increase or decrease? A. I think one year Hart & Hegeman increased its jobbing business. The Arrow had a tendency to go down.

Both divisions during that period, on account of the fall in the market had a tendency to lose in the jobbing game on shelf goods, but one year the Hart & Hegeman division made an increase, in 1929, but this can be readily shown and explained by the fact that the socket material and the plug material and the receptacle material which they were purchasing 2433
from the Arrow Company had commenced to have its effect. You will observe that throughout the figures,—that the percentage of loss of the Hart & Hegeman Division was less than that of the Arrow, due to the fact that material of high quality, along lines which they knew to be high quality, they secured practically 100 per cent. at once, whereas with the Arrow Division, which was a case of going over a good many articles that they were perfecting and changing, it took longer to effect. This shows that the percentage of loss of the Arrow in 1928 and 1929 was less than it had been previously.

2434 *John R. Cook—Recalled—Cross.*

Q. What do you mean less? A. Their losses were less. That is when the better constructed switches commenced to have its effect.

Q. But you testified that the Hart & Hegeman sales increased in 1929 as compared with 1928. A. Yes.

Q. Although 1928 was slightly smaller than 1927? A. Yes.

By Mr. Gross:

2435 Q. On shelf goods, you mean? A. Yes.

By Mr. Haycraft:

Q. Less in both years? A. Yes.

Q. That is a loss over one year? A. Yes.

Q. The figures that you have in mind in your testimony now, or the volume in money, would it be possible that it may be an increase in the number of articles sold? A. It would be.

Q. Can you testify, or do you have any records available from which you can testify with respect to the number of articles sold during that period? A. I haven't here.

2436 Q. Can it be prepared without any trouble? A. I don't know whether it can.

(Discussion off the record.)

The Witness: The volume in pieces would not be indicative of anything. We may sell more 3¢ articles than we would 15¢ articles. If you want me to speak generally on this, Mr. Haycraft, I can say this, which I formerly testified to, that although there was a decrease in the Arrow sales and also a decrease in the Hart & Hegeman shelf goods sales, except dur-

ing the year 1929, this decrease from all available information that we can secure of either division has been nowhere as great as the decrease of our competitors on equivalent material.

Q. Upon what do you base that statement? A. On what figures?

Q. Yes. A. Entirely from reports from my managers, salesmen, and also entirely on conversations with our competitors as to how much business they lost during a certain period. Any particular individual may give you incorrect information, but when you take the information as a whole from a great number of individuals, it points to a conclusion usually that is very accurate. 2438

Q. Your conclusion is that the two divisions during that period of time managed to maintain their relative position in the industry; in fact, increased it, so far as your competitors were concerned? A. Yes, my conclusion is—shall I say a conclusion? My conclusion is that—

Q. Yes, for whatever it is worth. A. —that during that period that the two divisions were perfecting their lines by being able to purchase better material, the Hart & Hegeman Company from the Arrow, and the Arrow Company from the Hart & Hegeman, and the using of Hart & Hegeman engineers in the construction of Arrow switches, enabling those two companies to compete with each other as well as the field at large. 2439

Q. How would they compete with each other? A. The two divisions compete with each other in this manner: Prior to 1927 the Hart & Hegeman division had no difficulty whatsoever in displacing the Arrow Company on switches. The reverse of

that is also true; the Hart & Hegeman Company could not sell and keep sold its sockets against Arrow competition. That enabled both companies to be stronger. Where they once installed themselves they could not so easily be displaced as they were heretofore. That is what I meant by that.

Q. That would be true so far as competition is concerned, but I can't follow you as to competition between each other? A. Oh, yes, very easily, because if the Hart & Hegeman Company were distributing first to distributor A, who had an insis-
2441 tent demand for Hart & Hegeman material to the contractor, and so forth, it was more easy for that division, or that company, in 1927, and even later, to keep that distributor in line, when they knew that they were not getting back Hart & Hegeman sockets and receptacles, when they knew that it had an acceptance with the contractors and architects for Hart & Hegeman sockets and receptacles. The reverse of that is also true of the Arrow switches, and it enabled those two companies and the salesmen of those two companies to have a great deal more aggression in going after that business and holding their business in the face of Hart &
2442 Hegeman or Arrow competition or anybody else's competition.

Q. Were the customers of the two divisions told that the sockets were better and the switches were better? A. A great many of the contractors are very familiar with the construction of sockets and switches, and they recognize certain weaknesses in the construction, and we go a step further; when once installed, if any trouble develops, it is proof that the quality was not there.

Q. Would the Arrow salesman calling on the customer tell him that the article would be better be-

cause of the assistance of the Hart & Hegeman engineer? For example— A. No, not at all. When the Arrow salesmen were showing, for example, the toggle switch that I spoke of before, they would say that it had been improved, and they would no longer have the trouble.

Q. And vice versa with the socket proposition? A. With the socket proposition it was the reverse of that.

Q. Wouldn't your Hart & Hegeman salesmen say that they were being made by the Paiste Company? A. No.

Q. Why? A. Because of our competitive spirit. 2444
The Arrow people did not want to admit that they got anything from the Hart & Hegeman so far as quality was concerned. The Hart & Hegeman were the same way. They did not know anything, as far as the trade was concerned, and they were in competition with each other. The trade did not know about it.

Q. How long would you suppose it was before the trade found it out? A. I think you will find that the testimony so far is that the trade does not realize it even today.

Q. The testimony is the other way, that they realize it now. A. They realize that the two companies 2445
got together. They don't realize that the Arrow Electric Company is making Hart & Hegeman—

Q. You weren't present at the hearing where the witness testified that he had received an article with a Hart & Hegeman label on it and an Arrow label pasted over it? A. There are accidents in the field. He said that he did not know whether he got an Arrow or a Hart & Hegeman socket in there; nor did he know anything about the construction. Of course, you realize that a great many of the shelf

goods items that are put out,—Hubbell, Bryant, G. E., Arrow—you can't tell one from the other.

Q. You could only tell from the way they worked? A. Yes.

Q. Now, this competition between the divisions which continued. Of course it is not your contention that there was any price concession or any better credit terms, or anything like that? A. No.

Q. It was merely a matter of personality of the salesmen, and continuing the contacts that they had made previously, and trying to improve them,
2447 and offering a better quality? A. That is correct. We make a lower price which we print on our discount sheets, and it is immediately met by all of our competitors, there are practically no price differentials. It is just like—we look at our material, for instance—to digress a minute—what we mean by this, it is like the raw material. Take copper, for example. Copper today is 8¼ cents. We can buy copper from any number of people, and our price would be the same, yet two companies get our business. We can buy it from a dozen. The commodity is the same; copper is copper, when you get down to it, provided it is refined to a certain de-
2448 gree. We give that business to one or two different companies because they give us service, because we like the individuals that call on us,—many reasons.

Q. Isn't there a difference between your copper illustration and this, that there is a difference in the quality that you put out, and that is a big talking point? A. A very big talking point.

Q. And naturally, since 1927, your quality is practically the same; the same engineers and the same men in charge to try to develop it and make money for the stockholders, with the same officials? A. Not 100 per cent.

Q. For instance, the Hart & Hegeman forces were trying to put their products on the market in a way that they would make money for the corporation? Also the Arrow? Is that true? Both organizations were attempting to make a profit for their respective organizations? A. In 1927?

Q. 1927 and 1928. A. Yes.

Q. And naturally they were going to push their lines as much as they could in order to make money for their respective corporations? A. Yes.

Q. But there wouldn't be any advantage in doing it to the extent of taking it away from each other? 2450
A. Yes, there would be.

Q. How? A. Each salesman and each sales department was independent. Each sales department is paid, and the recompense it would receive was from the work done. If one sales department failed in its job, and if I happened to be a member of that sales department, I would be writing my resignation as fast as I could.

Q. There would not be any advantage in one sales department of one organization carrying competition to the extent that it would take business away from the other organization, and depriving the other organization of profit. Where is the advantage? A. Competition is the striving of individuals 2451
to secure anything at about the same time. These people were in competition and striving to secure business, regardless of where they secured it, provided the credit was good.

Q. I can't follow you to the point where it would take business from the other divisions. I can't follow you on that. A. That is true. If you were a salesman of either division, and you represented in any given territory, and you had against you a

2452 salesman—say you were the Hart & Hegeman salesman—and you had against you the Arrow salesman, and you sat down and let him have that, where would the result of your sales effort be inside of a year? He would have every one of them and you would have none.

Q. That might be true on business which that man wasn't getting, but you know the situation as well as I do in this industry. Jobbers have testified that a jobber pushes a certain line, and the evidence shows that the Arrow salesmen do not call on
2453 Hart & Hegeman jobbers, and vice versa? A. That is true.

Q. Here is the Hart & Hegeman line. They push the Hart & Hegeman and make it more valuable all the time. It seems to me that the common sense and logical conclusion would be to push Hart & Hegeman where you can push it and Arrow where you can, but don't take it away from each other. That I can't understand. A. You brought up the occasion of the Arrow distributor being very seldom called on by the Hart & Hegeman distributor—

Q. Salesman. A. Salesman. If you had gone further you would have found out that that same
2454 Arrow distributor is very seldom called on by a Bryant salesman or Hubbell salesman or a G. E. salesman. In the setting up of any individual locality you try to have as many distributors there that can properly cover the territory. For example, let us take the territory of Springfield, where two distributors have formerly testified. We have there an Arrow distributor and we have there a Hart & Hegeman distributor. Our men created—our advertising and everything—a demand for our material.

Q. Both divisions, for both divisions? A. And if we placed another Hart & Hegeman distributor in that town we lose the support of the Charles E. Hayes Company immediately, because we have split his possible market possibly in half, or taken some of it away, and he would then prefer to handle some other line whereby he would not have this other fellow competing with him all the time, and where he could really cover the territory, and where he got sufficient quantity of business out of it to be worth while. A great many of our distributors, if we put in another distributor, or two or three more, 2456 we would possibly lose more business than we could secure. Now, the competition among our salesmen is creating the demand in the field with the contractor, and a preference for their particular brands, which demand goes back to their distributor.

Q. How is that competition going to be substantial when it is the same articles? A. Well, the labels are well known, they believe today in Hart & Hegeman switches, and they believe today in Arrow sockets. Although the Arrow has a switch line today, it is not held in the same position as the Hart & Hegeman switch line. The reverse is true 2457 with the socket line. In going out among the contractors the salesman is there with the idea of selling his commodity to that contractor. The reverse is true.

Q. But the contractor can't get out of his head that when he is buying Arrow he is buying Hart & Hegeman and when he is buying Hart & Hegeman he is buying Arrow? A. Yes.

Q. How can they? A. They are not the same stock. You were testified to by a jobber from New-

ark that he had to give up the Arrow because he couldn't have it sold, because the demand was for H. & H. There was a demand for it.

Q. There was testimony both ways. If I was an electrical contractor, it wouldn't make any difference except the personality of the salesman where I wanted to throw my business? A. A part of competition is personality.

Q. A part of it, yes. A. You see, a great deal of the selling is personality right straight through.

Q. It is one element, but the quality and price
2459 and terms and credit are also elements. A. Absolutely.

Q. And the point I am trying to get clear on, and get your ideas on, is as to what there is left in competition after those things have been taken out. A. In the first place, prices and terms remain the same, as has been testified to you a number of times. At the present time you will admit personality enters into competition. Now, it is a question of quality entering into it, and you have had testimony from one jobber, and I haven't heard any other jobber tell you, that the material is the same. It is our belief and our contention that the trade at large
2460 goes by the brands. They know that the Arrow Company has a good brand of material today, and that the Hart & Hegeman Company has a good brand of material today. They don't know that possibly they are made in the same factory. They know that the two have combined.

Q. That trade letter, of course, Mr. Cook, carried the idea to your distributors, that they would be made, and that economies would result, and they would understand? A. Yes, certain parts.

2461

Q. In your direct testimony you referred and identified a number of articles and devices which you described as illustrative of economies that resulted from the merging of the two organizations, referring to the reduction in price and also, in some instances, to an increase of quality. To determine whether there had been economies resulting from merging the two organizations, what factors would have to be taken into consideration? A. Could you explain that a little further?

Q. How would you determine whether you had made a saving or improved your quality as a result of the merger? A. This is after the period when the merger took place?

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Q. I am talking after October, 1927. A. In the first place, I think I testified yesterday, starting in 1927, why the Hart & Hegeman Company could purchase from the Arrow Company sockets which they were manufacturing, at a lower price.

Q. How could you say that was brought about by the merger? A. Because I formerly testified here that until that time we did not dare to put our socket business with anybody else, if we were to have a doubtful source of supply, and it gave to the Arrow Division, as far as economy is concerned, probably 50 per cent. more sockets than they were formerly manufacturing.

2463

Q. In other words, the Arrow Division profited by it because they could increase their production and have a smaller unit cost? A. Yes, and also the Hart & Hegeman Company, because the Hart & Hegeman were purchasing sockets at a discount from the Arrow.

Q. Mr. Grier testified that that could have been brought about without any acquisition of stock, without any merger. They were just like two inde-

pendent companies doing business. As a matter of fact, they manufacture for others. A. Yes.

Q. The main thing growing out of the acquisition of the stock, and which was distinctive, would be the creating of a source of supply and giving you control over it? A. But they were both controlled by the same organization, and most assuredly that organization was interested that both companies were properly run, and most assuredly that organization would have seen that one sold to the other out of a definite source of supply.

2465 Q. And isn't it true, and a correct conclusion from the testimony you have given, and from your knowledge of the industry, to say that a definite source of supply of a satisfactory material is as vital to the sales organization as any other factor? A. Absolutely.

Q. You can't hope to compete with outside organizations unless you have some advantage along that line? A. A definite source of supply is absolutely necessary to properly compete with the field, because you could never give proper service.

Q. In other words, you can't draw a line of demarcation between production and sales and say
2466 that this economy can only benefit the production end and have no effect on the sales end? Any economy— A. Any economy in production would be shown in dollars and cents saving; any advantage in sales would be to allow one organization to more readily compete in the field.

Q. Would you say that would be the main purpose of bringing about all these various economies that you have described, to enable the organization —that— A. That is one of the purposes, but it is not necessarily the main purpose. There may be four or five others.

Q. You would not say it was the main purpose? A. No, there are four or five purposes in making an economy. The first thing you look for, as I have testified before, is how much more economically a thing can be manufactured, and also in the perfecting of an article, where it is a better article, and still make an economy. It is creating a greater demand for your article, whatever it is you are manufacturing, among the users of the material.

Q. Now, going back to the various exhibits that you have described yesterday. The figures which you read into the record all had to do with the sale price. Now, in determining the question of economy, isn't it proper to compare the cost price before and after a certain period of time to determine whether there had been an increased sale or an economy, or not? A. In many of these articles economies have existed and have taken place, and that has allowed us to be able to lower our price. In a great many instances we have lowered our price to reach a proper market so as to increase our sales, and thus increase our production and our profits. 2468

Q. If you were to measure the extent of an economy in any division or in the manufacturing of any article, wouldn't you determine whether your cost had increased or decreased? A. We generally determine the cost of a given article and the profit on a given article in the lump sum. I mean we can make a thousand of these switches and probably make ten cents a piece, and in that way make $100. If we make our price a nickel a piece and sell 10,000, we make $500., and that is the way we figure in most of these reductions in prices, to get our manufacturing facility so as to produce it lower, either in actually saving in labor and material ex- 2469

pended, or by increasing the volume of sale so that we can produce it at that lower price and still make as much, if not more money.

Q. The point I am trying to get at is, in determining that you have realized an economy in production as a result of anything you wish it to result from, don't you first have to find out what your cost of production is and compare it with your former cost of production? A. Yes.

Q. That being true, how can I or the Commission or anyone reading your testimony of yesterday, determine the comparative costs of these articles before and after the so-called economies were put into effect?

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Mr. Gross: They weren't offered for that purpose, Mr. Examiner. It was offered for the purpose of showing the benefit to the public.

Mr. Haycraft: Are you objecting to my question?

Mr. Gross: He said it was to show the reduced cost on the separate articles.

Mr. Haycraft: I would like to have an answer to my question unless it is objected to.

2472

Mr. Gross: I want to put on the record the purpose for which it is offered.

(The last question was read by the reporter.)

A. You can only determine by getting the costs before and afterward.

Q. These articles described in your testimony yesterday are sold in competition with other manufacturers? A. Most of them are.

Q. Will you make an exception as to those that are not? A. Practically starting in with Exhibits 25 to 28.

Q. The panelboard switches and the U-shaped lever switch? A. That is right. There is practically no competition on this type of switch. Other manufacturers are attempting to compete with this material with a much inferior article, but we don't consider it very serious.

Q. So inferior that you do not take it into consideration? A. So inferior that we haven't taken it into consideration. Our prices are higher to the inferior article which they offer. A great number of times we have been the people to lower the price, not entirely to meet competitive conditions, but very often to help our users, to do our share in helping them in meeting competition. 2474

By Mr. Gross:

Q. And procure a larger volume? A. Yes, of course.

By Mr. Haycraft:

Q. You don't want us to believe that you are an eleemosynary institution? A. Oh, absolutely not.

Q. Taking up the first items of sockets that you described yesterday, when you testified with respect to the changes that were made. I will ask you upon whose initiative and whose ingenuity those changes were developed? A. You mean in the construction? 2475

Q. Yes. A. The changes that have been made on the sockets under consideration have not been very extensive. There have been changes—minor changes in perfecting the mechanism on the key and pull sockets, but really what small changes have taken place have been in the economy of manufacturing the parts for the sockets and the economy in mold-

ing the porcelain for the sockets, that is, on their brass shell sockets. When we come to the pull chain sockets, the new and the old, there great strides were made in the economy of manufacture and perfecting the quality, and this was done by Mr. Guett and Mr. Nero, this construction.

Q. Mr. Guett being the— A. The engineer in chief of the Hart & Hegeman Company formerly, and Mr. Nero being an Arrow engineer.

Q. Now, will you describe just what connection the so-called merger had to do with the bringing
2477 about of those economies?

Mr. Gross: Just a moment. I ask that the question be revamped so that counsel for the Commission will use words that do not call for a conclusion of law as to what a merger is, whether under Connecticut law or the Federal Trade Commission Act.

Examiner Reeves: The objection is sustained.

Mr. Haycraft: Exception, please.

Q. I notice that in your testimony you gave figures as to the prices that you received for those articles in October, 1927. From what source
2478 did you obtain those figures? A. From my price cards at that time.

Q. Are they available? A. They are.

Q. I should like to have you produce your price cards or lists of your catalog articles on October, 1927, January, 1929, and June, 1931. A. They are all in evidence at the present time, until we get down to the line of asterisks, and they will have to be accumulated.

BY MR. GROSS:

Q. Beginning with Exhibit No. 20-A. A. Yes.

(Discussion off the record.)

BY MR. HAYCRAFT:

Q. You mean, Mr. Cook, that you have read into the record the prices of all the sockets that you have described? A. Yes.

Q. In your testimony yesterday you stated, I believe, that these various articles you referred to were 2480
manufactured in what is known as mass production, and that the figures that you have given and the items you described were illustrative of economies that were realized in mass production of other or smaller articles, is that correct? A. Why, a good number of these articles are manufactured by mass production, and the only reason we brought the mass production item forward is that economies realized in the smaller production items could never be as great, in our estimation, in dollars and cents, or in what we could offer to the public as it was in the most popular items. In other words, we have tried to bring forward items that the public used 2481
to a greater extent, rather than go around and pick out a little user of the commodity and very small insignificant sale.

Q. What percentage would you say were the items that you have described here is of the total number of items that are manufactured in this mass production? A. I can't give you the exact percentage. Anything I might say would only be a hazard or an estimation.

2482 *John R. Cook—Recalled—Cross.*

Q. Yes. A. I would say they would easily represent—themselves plus the variations of them that would have the same scale of price reductions—would easily represent 50 to 60 per cent. of our entire sales.

(Discussion off the record.)

Q. Take these sockets. Would that be true—would that be about 50 per cent. of the sales of sockets? A. I imagine in the sockets it would be about 75 per cent.

2483

Q. Does your testimony have reference to both divisions? A. To both divisions, yes.

Q. And the economies you are describing, in other words, would be reflected in both divisions? A. They would be, as of today.

Q. How many of these socket items that you have described here were manufactured by the old Arrow Company before 1927? A. All of them.

Q. How many were being manufactured in mass production by the Arrow Electric Company prior to October, 1927? A. Practically all of them.

Q. Would you say that the reduction in price would result from the increased production, and thereby cutting down the unit costs of these items?

2484

A. I would.

Q. Taking up the next schedule, P, the plug and receptacle items. What percentage of your total sales of that type of items are represented by these four items? A. If I should put in the single receptacle with these four items, it would amount to at least 75 to 80 per cent. of schedule P.

Q. Were those plugs manufactured by the Arrow prior to October, 1927? A. Yes.

Q. And in mass production? A. Yes.

Q. And your answer would be the same with respect to these plugs as it was with respect to the sockets? A. It would.

Q. Taking up the plates and bull's eyes, Schedule H. A. Yes.

Q. What percentage would you say those items were of your total sales? A. Of Schedule H?

Q. Yes. Plus the plates in Schedule H they would represent 60 to 70 per cent. of the total schedule, if not greater.

Q. I am referring to Exhibits 13-A, 13-B, 14-A, 14-B, and 18-A and 18-B. A. That is correct. I might add there that we would have to include our brass plates with the bakelite. Now, on brass plates there have been no quality improvements, but there has been a mass production improvement on them. 2486

Q. Were these manufactured by the Arrow Company prior to October, 1927? A. I don't think they were by the Arrow Electric Company. These exhibits 13-A and 14-A and 14-B, the plates, were manufactured by the Arrow Electric Company in brass, but they gave them up because their methods of production were very expensive, and they bought the plates from the Hart & Hegeman Company. The bakelite plates were purchased outside by the Hart & Hegeman Company, who in turn bought them, when the Arrow started to make them, from the Arrow Electric Company. 2487

Q. In other words, after October, 1927, what happened with respect to these plates, the Arrow discontinued to make the brass plates? A. That is correct.

Q. And purchased from the Hart & Hegeman Company? A. And also the bakelite. Arrow started to make bakelite. They had been purchasing that formerly from the Reynolds Company, and the

2488 *John R. Cook—Recalled—Cross.*

Hart & Hegeman had been purchasing their plates from Hoosick Falls, and the Arrow decided to make a bakelite plate, and plus the sales of the Hart & Hegeman we were able to equip a plant with dies and molds in order to make our own plates.

Q. That would be one item that you had really started yourself, in your own organization, that is, the manufacture? A. No, the bull's eye.

Q. I meant the bull's eye. A. Yes. The bull's eyes were purchased from the outside, an outside company, and we improved them and started to
2489 build them ourselves.

Q. Going down to Schedule S material, the tumbler switches and canopy switches, down to Exhibits 15 to 17. What percentage of that type of material is Schedule S material? A. I would say that Schedule S material—leaving out the heater switches, that would represent between 60 and 70 per cent. of the sales.

Q. Were those switches made by the Hart & Hegeman Manufacturing Company in mass production before October, 1927? A. Some of them were and some were not.

Q. Which of them were not? A. Exhibit 15-A
2490 type switch was made in mass production before that time by the Hart & Hegeman. 16-B was made by the Arrow Electric Company, but not in mass production. Exhibits Nos. 20-A, 20-B, 21, 22-A, 23-A, 23-B, 24-A, 24-B, 26-A, 26-B, 26-C, 27-A and 27-B were in mass production.

Q. By Hart & Hegeman? A. By Hart & Hegeman. Those that I have eliminated were small items. I might say that they became larger in volume afterwards.

Q. Now, wherein were you able to bring about economies in the production of those items after

October, 1927? A. If we were setting up machinery blanks, for parts of these switches, the setting-up charges were just about the same, whether we were going to make 500,000 parts or 1,000,000 parts. We come to the next operation, the assembling, and if we can add another 10,000 articles a day to the 10,000 already produced on the same bench, we can very much lower our overhead in both instances. Further than this, when we are able to produce material in a larger volume it then becomes economical to design machinery that will do a great many operations that formerly had been done by hand, 2492 automatically. That is the answer to that.

Q. Now then, where did you secure your increased sales which enabled you to bring about these economies in these items in mass production? A. We secured our increased sales from the fact that in the period of the first respondent Arrow secured their sales immediately by taking over of the making of Hart & Hegeman sockets.

Q. I am talking about switches. A. Oh, we secured our increased sales on these switches by the fact that certain numbers of these switches were made for Arrow, but the greater percentage of the increased sales on switches was due to increasing 2493 our market and the usage of the switches by lowering the prices, securing a larger volume; and we secured economies by economy in design.

Q. Was Mr. Guett the one who brought that about? A. Yes.

Q. During that 15-months period, from October, 1927, to January, 1929, what volume of switches did you make for the Arrow? A. 1927 to 1929?

Q. Yes. A. We manufactured very few, if any, for Arrow.

2494 *John R. Cook—Recalled—Cross.*

Q. Then how do you trace your economies to the acquisition of the stock of the two companies by the old respondent? A. In the manufacturing?

Q. Yes, economies in that Schedule S material in that time. A. We can trace our economies to economies in—I don't think we can trace the economies on switches, other than the interchange of ideas with the engineering department, due to any holding company, perhaps, in 1927.

Q. All right. Then take the latter period. A. In the latter period we can trace our economies on
2495 switches due to the fact that some of them were made for the Arrow Electric Company.

Q. Increasing your production? A. Yes. We can also trace the combination departments, the planning, screw-machine, and screw-making departments, to a number of economies that I mentioned here in the beginning. Now, the reason we could not realize during the period of the first respondent on economies on switches, due to the ownership of the stock of both companies, was that any plans that we had that would effect economies on switches for this reason were of such scope that it would take a period of a year or two years, even
2496 longer, to put them into effect.

Q. I show you Respondent's Exhibit 11-B, and ask you if that is the attachment plug item that you testified on direct examination as bearing the Arrow-H. & H. trademark? A. It is.

Q. Is it correct to say that this trademark is not only on the contact, but also on the fibre washer on the plug? A. It is.

Q. I also ask you whether or not this particular plug does not have the finding groove which is peculiar to your organization? A. It does.

Q. Isn't that an advantage which distinguishes this plug from its competitive plugs and makes it very much sought after? A. We think it is a selling point and an advantage. However, our competitors have finding grooves of some types.

Q. How long did you say that was on the market? A. I should say a year and a half.

Q. And how are the sales as compared with the plugs that preceded it? A. About the same.

Q. As 11-A? A. Yes.

Q. In point of volume, could you check up on that and find out whether they increased or decreased over the same period of time? 2498 I can. We are still selling 11-A.

Q. The other item you described before is not in evidence, is it? A. No, but I can put one in. I have one here.

(Discussion off the record.)

Q. Now, referring to Respondent's Exhibit 29, the minutes of the stockholders and the Board of Directors of the H. & H. Electric Company, which you have identified, just what did you do or just what did you have to do with the transactions that were represented by that exhibit? A. I was a direc- 2499 tor of the company, and I was secretary of the company, and all transactions were brought to the directors' meeting and voted on, and, being present, I voted.

Q. What was the purpose? A. It was in the general plan of reorganization.

Q. How long was it in existence? A. I would say about a month.

(Discussion off the record.)

2500 *Thomas A. Inch—Direct.*

Q. Who prepared these minutes, Mr. Cook? A. I did, at the direction of the Board of Directors, acting as secretary.

Q. Do you mean by that that you dictated the minutes or signed them? A. I with the help of Mr. Williams. He was president of the company at that time.

Q. Mr. Williams? A. Yes.

Q. Was it done pursuant to and with the advice of counsel? A. It was.

2501 Mr. Haycraft: I think that is all.

Mr. Gross: That is all.

THOMAS A. INCH, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. Will you give your name? A. Thomas A. Inch.

Q. And you live where? A. Hartford, Connecti-
2502 cut.

Q. Prior to coming to Hartford, what was your business? A. I was for seven years with a leading firm of public accountants in New York City.

Q. And during that time, were you designated by them in connection with audits of the Hart & Hegeman books, amongst others? A. Yes.

Q. How long were you on those Hart & Hegeman books—what years before you came to Hartford? A. I went over them for the years 1925, 1926 and 1927.

2503

Q. That is, you were one of the supervising seniors of the people that did the work for this firm? A. I was a supervising senior.

Q. When did you come to Hartford? A. March, 1928.

Q. What did you become when you came to Hartford? A. I was comptroller of the Arrow Electric Company.

Q. How long did you continue as comptroller of the Arrow Electric Company? A. I continued until December 31, 1928, when I was appointed comptroller of the Arrow-Hart & Hegeman Electric Company.

2504

Q. And then, after being comptroller of the Arrow-Hart & Hegeman Electric Company, what did you become? A. Treasurer—or, rather, assistant treasurer of the same. I was appointed assistant treasurer.

Q. And later became treasurer? And on March 18, 1930, I became treasurer, in which capacity I have remained up to this day.

Q. Now, you came to Hartford in 1928. What were your duties in becoming comptroller of the Arrow Electric Company? That was in the period of the holding company. A. At that time Mr. Ten-Eyck was in full charge of the accounting and records of the Arrow Electric Company. He was in failing health, and I took over the management of all the financial records of the Arrow Electric Company for him.

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Q. Was it a part of your duty soon after coming to Hartford to coordinate the systems of bookkeeping and records of that nature between the Arrow and the Hart & Hegeman Companies? A. Yes.

Q. Have you at our request gotten out the comparative figures to show the economies accomplished

2506 *Thomas A. Inch- Direct.*

during the period of the holding company and into the period of the merged company as reflected in the profits in the face of the lower profits based on the statements for 1927, 1928 and 1929? A. I have.

Q. Will you give us those figures for those years? May I ask first who prepared the Arrow figures for 1927? Who made the audit of the Arrow for 1927? A. The books of the Arrow Electric Company for 1927 were audited by Messrs. Haskins and Sells, a leading firm of accountants of New York City.

Q. Who made the audit of the Hart & Hegeman Company—perhaps you testified that your firm
2507 made the audit of the Hart & Hegeman books for 1927? A. Yes.

Q. And who audited the books of both the Arrow Electric Company and the Hart & Hegeman Manufacturing Company for the year 1928? A. Messrs. Lybrand, Ross Brothers & Montgomery, also a leading firm of accountants of New York City.

Q. Who made the audit of the new respondent, the Arrow-Hart & Hegeman Electric Company, for the year 1929? A. Messrs. Lybrand, Ross Brothers & Montgomery.

Q. Do I understand that the figures, these com-
2508 parative figures are based on these audit statements of theirs? A. Yes.

Q. Will you give us, then, these figures?

Mr. Hayeraft: That is objected to as incompetent, irrelevant and immaterial to the issues in this case.

Mr. Gross: I thought my learned friend was trying to gather what the economies were and how they were reflected. I want to show the figures, as well as the profits and the economies as reflected in those financial statements

for those three years, which are the three years involved.

Mr. Haycraft: I have objected regularly, perhaps not strenuously, to bringing that out by counsel for the respondent with respect to this phase of the defense. The mere fact that I was thorough in my cross examination of respondent witnesses in respect to this matter does not mean I am at all giving up my rights and objections that I made in the beginning of the examination.

Examiner Reeves: The objection is overruled. 2510

Mr. Haycraft: Exception.

(The last question was read by the reporter.)

A. I would like to deal with the three years of 1927, 1928 and 1929. The holding company was formed towards the end of 1927. The total net sales in 1927 were $8,386,000.

Q. Meaning the aggregate sales of the two companies? A. Of the two companies. The manufacturing cost of the goods sold in the year 1927 was $5,709,000, showing a manufacturing profit of 31 per cent. 2511

The net sales in the year 1928 were $7,915,000, and the manufacturing cost of these sales was $5,219,000, showing a gross profit of 34 per cent.

The net sales in 1929 were $8,183,000. The manufacturing cost of these sales was $5,318,000, showing a manufacturing profit of 35 per cent.

In the year 1928 the fall in prices, due to market conditions, gave us a loss in sales revenue of $500,000. In the year 1929 the loss in the revenue from the fall in prices was $600,000. It will be

2512 readily seen, therefore, that we made a higher manufacturing profit in the face of lower prices due to market conditions.

Q. Which is referable to economies? A. I would like to continue on that a little more.

Q. Yes. A. The prices of materials rose steadily between 1927 and 1929.

Q. You mean the raw materials? A. Yes. Copper, which is used largely in the form of brass, rose from 13.24 cents a pound, in October, 1927, to 21.38 cents a pound in 1929. Certain fixed charges of
2513 the companies increased due to high depreciation caused by expansion, to higher local taxes, and other factors over which we had no control.

The additional manufacturing profit, therefore, was made in the face of increased material costs and increased fixed charges, proving, in my opinion, that this additional profit was derived from economy of manufacture.

Mr. Gross: You may inquire.

CROSS EXAMINATION BY MR. HAYCRAFT:

2514 Q. Why did you not include the year 1930 in your study? A. Because, owing to the severe depression, which commenced in October, 1929, manufacturing conditions were very much abnormal, due to a heavy drop in the volume.

Q. Do you know whether or not your manufacturing profit would maintain the ratio that it did in the preceding years during that year? A. It would have been maintained if we eliminated the tremendous amount of idle equipment, due to fall in production.

Q. But you could not do that very well, could you? A. We could make an estimate of it.

2515

Q. What would your estimate be if you included that? A. If we included idle space as part of the cost of manufacturing, it would have gone up.

Q. In your items you mentioned due to expansion. What do you mean by that? A. High depreciation due—in the first place, we built this office to take care of the Hart & Hegeman forces. Of course, we had heavy charges in the bakelite plant, and certain changes made in our Washington plant.

Q. Have you got any idea about how much that item would amount to? A. I should estimate the depreciation charges increased from about $270,000 a year in 1927 to about $300,000 a year in 1929.

2516

Q. Have you made any study of the same ratio, of the same items of the two operating companies before the stock acquisition, or in the period of 1924, 1925, and 1926? A. As regards the cost of manufacture?

Q. Yes. A. I had the same figure back to 1925.

Q. For both companies? A. Using them as one company.

Q. As one company? A. Combining the figures.

Q. Combining the figures? A. Yes.

Q. Will you give those for the record? A. The combined sales in 1925 of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, 1925, were $8,634,000. The manufacturing cost of the goods sold in that year was $5,723,000, showing a manufacturing profit of 33 per cent. The combined sales of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company in 1926 were $8,165,000, and a manufacturing cost of these sales of $5,479,000, showing a manufacturing profit of 32 per cent.

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Q. Can you give the same figures for the separate companies? A. I haven't got them available, but I can prepare them.

2518 *Thomas A. Inch—Cross.*

Q. I should like to have those separate, for those two years.

Mr. Gross: The figures for the Hart & Hegeman Manufacturing Company, in each case including the Paiste figures, both.

The Witness: Yes.

Mr. Gross: And likewise, in each case, the Arrow Company, that would include their porcelain plant, if it was operating.

The Witness: Yes.

2519 Q. In your figures for 1927, 1928 and 1929, how did those figures reflect the physical properties located in Philadelphia and in New Jersey that were given up and not being used? A. Of course the Paiste plant was running practically up to October, 1927, and then it was shut down. Any shut-down expenses incurred were included.

Q. What was done with the plant there? A. The Paiste plant was rented piecemeal as we could rent it, a part of a floor here and a part of a floor there, and today most of the building is rented, and the income covers about the shut-down expenses.

Q. Is that true over in New Jersey? A. Yes, 2520 that is the same. That was rented to the Whitehead Pottery Company, and also the rental received covers the shut-down expenses.

Q. During that period of time both of those plants were not all rented? A. No.

Q. Wasn't the maintenance included here in the figures in determining the sales cost? A. I don't think they were. I think they were treated as separate.

Q. What did that amount to? A. In 1928 the maintenance of the shut-down factory in Philadelphia, net income, of rentals, was $29,412.

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Q. That is the cost over and above the rental? A. Yes. With regard to the electric porcelain plant in Trenton, that did not discontinue manufacture until about September, 1928, and these expenses were not being segregated, but they have been included in the cost of manufacture.

Q. How about 1929? A. The shut-down expense of the Paiste plant in 1927 was $14,998. over and above the rentals received. The shut-down expense of the Trenton plant for 1929 was $1,373 in excess of the rentals received.

2522

Q. What was the percentage of the net profit realized in 1927, 1928 and 1929? A. The net profit in 1927 was 10 per cent. of the net sales. In 1928 it was 15 per cent. of the net sales. In 1929 it was 16 per cent. of the net sales.

Q. What was the net profit in 1925 and 1926? A. In 1925 it was 15 per cent. of the net sales, and in 1926 it was 13 per cent. of the net sales.

Q. In making up this statement that I requested you to make with respect to 1925 and 1926, would you be able to give me the net of each? A. Yes, surely.

2523

Q. How do you account for the reduced net profits in 1927 as compared with the other years in your study, as compared with the preceding years? A. In the first place, the manufacturing or gross profit came down from 33 per cent. in 1925 to 32 per cent. in 1926, to 31 per cent. in 1927. Presumably, although I can't verify it at this moment, it was probably due to heavy expense in 1927 in connection with the formation of the holding company, with the attendant legal fees and auditing expense.

2524 *Thomas A. Inch—Redirect.*

Mr. Haycraft: I think that is all.

Examiner Reeves: The hearing will be adjourned to 2:30 P. M.

(Whereupon, at 1:30 P. M. an adjournment was taken to 2:30 P. M.)

AFTER ADJOURNMENT—2:30 P. M.

THOMAS A. INCH, resumed.

2525 REDIRECT EXAMINATION BY MR. GROSS:

Q. Mr. Inch, I neglected to ask you before when you were speaking with reference to the fact that raw material went up, as I recall it, what was the relative change, if any, in the basic price of labor for that period? A. Labor remained about the same throughout that period, with a slight increase, if anything.

Q. Taking these figures which you gave this morning, what are the figures of the economies of saving in dollars realized by the economies which you testified to? A. I would like to refer in that
2526 regard to Mr. Cook's testimony yesterday. He gave testimony with regard to certain economies, and I would like to supplement him. We have here, I think I can safely say, a very modern, up-to-date accounting system, which has been highly approved by at least one leading firm of accountants; one complete and modern cost department, and we have spent a lot of money on our accounting. Of course, a proposed economy might originate anywhere: with the president or with any of the officials, and when an economy is proposed, it is handled by Mr.

Ten Eyck. He is a man of vast factory accounting experience, and he makes a full study of each of these economies. In conjunction with our cost department, these figures are reviewed by myself, and if it is a factory economy, with the factory superintendent, and we estimate the economy, and if we are satisfied that that economy does result in a saving we put it into effect. I would like to give you some figures with regard to those economies that Mr. Cook touched on yesterday. 2527

The first one is the closing down of the Paiste plant. I won't go into details, but we estimated the minimum saving by the closing down of the Paiste plant and making all the Paiste material in this factory was $300,000 a year. 2528

The next one was the introduction of the new tumbler switch. The saving as estimated by the economy committee, I will call it, in that case, was $35,000 a year. As a matter of fact, in that connection we estimated a new manufacturing cost on this switch, and when we got the actual cost a few months later, the difference was only 40 cents per 1,000.

Q. Between the estimate and the actual? A. Yes. I think Mr. Cook touched on the manufacture of paper boxes. That gave us an economy of $18,000 a year. The combining of the automatic screw machine department gave us an economy of $18,000 a year. 2529

Q. The same as on paper boxes? A. $18,000 a year, also, yes.

The introduction of machinery that would print and fill envelopes with screws, which Mr. Cook touched on, gave us an economy of $11,000 a year.

The introduction into this factory of what was referred to yesterday as the Guett screw-driver, for

2530 putting the screws into the screw parts, gave us an economy of $20,000 a year.

We brought together our trucking facilities and we made a saving there estimated at $5,000 a year.

We were able to obtain better rates on insurance by using blanket policies covering all plants and by changing our agent's ratings somewhat, which gave us $8,000 a year.

On January 1, 1929, which was the day when the merged company began business, we unified our accounting. While the holding company was in
2531 existence we had completely separate sets of books and records. When the merged companies began operations we combined our general account into one unit.

Q. In one office? A. In one office and one set of books and one set of subsidiary records, and we made a saving there at the rate of about $30,000, which of course would not have been possible in the days when the two companies were separate.

Those are the major items which we can definitely identify, but I believe there are much larger intangible savings that we can't give you the figures on in dollars and cents.

2532 Q. Are those figures adducible from the table that you gave us this morning? In other words, are they reflected in that statement of manufacturing costs and profits? A. Yes. For instance, I showed here commencing with the year 1927 our ratio of manufacturing profit to sale. That was influenced by a very heavy fall in the market. If you were to re-state the 1928 and 1929 sales on the basis of the prices prevailing in 1927 your ratio of manufacturing profit would have shown a very, very heavy increase, and, as I stated before, material went up, labor went up slightly, fixed charges over which we

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had no control went up somewhat; therefore, there is no doubt whatever but that the saving must have come in economy of methods, economy in labor and in design.

(Discussion off the record.)

Q. Have you the total combined selling expense of the two companies or the two divisions, as the case may be, with the ratio to the aggregate domestic sales of the two companies or two divisions? A. Yes, I have.

2534

Q. Will you read them into the record? A. In 1928 the combined domestic selling expense was $550,004; the ratio to combined domestic sales 7.36.

1927, combined domestic selling expense $566,741; ratio to combined domestic sales 8.14.

1928, combined domestic selling expense $594,000; ratio to combined domestic sales 8.14.

1929, combined domestic selling expense $688,000; ratio to combined domestic sales 9.03.

1930, combined domestic selling expense $681,000; ratio to combined domestic sales 11.45.

Mr. Gross: You may inquire.

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RECROSS EXAMINATION BY MR. HAYCRAFT:

Q. I notice that in referring to various economies that have been made, there is no mention made of the consolidation of the sales offices. Was there any economy realized from that? A. You are referring to the period before—

Q. I am referring to the period of this last year when the consolidation of the sales executives took place. A. There is possibly a very slight economy

2536 *Thomas A. Inch—Recross.*

due to the saving in rental, but otherwise I know of no economy.

Q. In salaries; where you had two sales managers and now you have one. A. I understood you had already taken that into account; that it was granted that there was a saving there.

Q. There was some saving in the consolidation both in salaries and rents? A. Yes.

By Mr. Gross:

2537 Q. Beginning with 1930?

Mr. Haycraft: Yes.

By Mr. Haycraft:

Q. Taking up your saving of $300,000 with regard to the Paiste plant, will you give us the details on that? A. The Paiste Company sales to their then parent company, the Hart & Hegeman Manufacturing Company—

Q. When? A (continuing)—for the years 1925, 1926 and 1927, were approximately $4,200,000.

Q. Each year? A. No, for the three years. The
2538 total approximately, I better say. The Paiste books showed a net profit for those three years; that is, a total profit for those years of $65,000. However, when the manufacture of the Paiste line was transferred to the Arrow plant in Hartford we found it was necessary to write off something over $60,000 for obsolete material and obsolete dies and tools which they themselves had omitted to write off in past years.

If we assume, therefore, that they should have written off these obsolete materials, obsolete dies

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over this period of three years it means that they would have no profit at all for those three years.

Q. May I ask right there: How did the price at which they sold to the Hart & Hegeman in 1925, 1926 and 1927, compare with the sales of the Arrow in later years? How was that price fixed? A. I can't answer that. It was before my time. I will have to find out.

Q. That would have some reflection? A. That would have, yes.

Q. I would like to have you investigate that and see how it compared. A. Yes, I will. I will take the main items.

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Q. Yes, the main items. Go ahead. A. In the year 1929 the sales made by Arrow to Hart & Hegeman Manufacturing Company of Paiste material—

Q. Are we skipping 1928? A. I have the volume for 1928, but I did not make the investigation. The sales in 1928 made by the Arrow Company of Paiste material to the Hart & Hegeman Company were $1,044,000.

The sales made by Arrow to Hart & Hegeman of Paiste material in 1929 were $1,127,000.

In the year 1929 we kept detailed workouts of these sales, and the cost of manufacturing these sales by Arrow, and we found a profit of $307,000.

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By Mr. Gross:

Q. To Arrow? A. To Arrow.

By Mr. Haycraft:

Q. Now— A. (continuing) The difference between the manufacturing cost of Arrow and the price at which they sold the goods to Hart & Hegeman.

2542 *Thomas A. Inch—Recross.*

Q. Now, how did that compare with the cost price? What was the basis? A. As far as I recollect, those sales of Paiste material to Hart & Hegeman were billed at 6 per cent. less than the best distributors' prices.

Q. This 6 per cent. of it Hart & Hegeman got for selling it to distributors? A. Yes. In computing the cost we took the total manufacturing cost, including direct labor, material, and factory overhead, and the difference was this $307,000.

Q. And that is what you estimate, then, in saying it is $307,000? That is what you assume it was in 1928? A. We knew what they made in 1929, but we haven't got it for 1928; so that figure represents about 27 per cent. manufacturing profits; if you applied that back to 1928, assuming the same conditions, they would have made $282,000.

Q. From your experiences in studies of this kind, would you think it would be fair to assume that they made about the same in 1928 as they did in 1929, taking into account the necessary changes that would have to be made? A. Well, they would have to get under way.

Q. In other words, 1929 began to show better profit than 1928? A. Yes.

Q. I notice no mention was made of any profit in the transfer of the Washington-New Jersey plant. Was there a loss sustained there? A. Yes, there was a loss immediately after the transfer, due to gross mismanagement of the Washington manager, who was discharged.

Q. Do you know what it amounted to? A. The sales of the electric porcelain and manufacturing company for three years, 1925, 1926 and 1927—

Q. In the aggregate. A. In the aggregate totalled $1,088,000 worth of porcelain. The sales of the

Washington Porcelain Company for the same period totalled $1,244,000.

Q. That is the total sales of the Arrow plant during the same period of time? A. Yes.

Q. What happened in 1928? A. The transfer took place in September.

Q. Just what profits were realized in Trenton in 1925, 1926 and 1927? A. The Trenton sales for those three years showed a profit for the three years of $47,000.

The sales of the Washington Porcelain Company for the same three years totalled $170,000, or approximately four times as much. 2546

In 1928 Trenton showed a profit of $2,000. That is, on account of the fact that their sales ceased in September, but the shut-down expenses were carried on throughout the year and deducted from any profit which they might have had.

The Washington plant showed a profit for 1928 of $86,000.

Q. How about 1929? A. 1929 is an unfortunate year. The Washington plant showed a loss of $24,000. I would like to enlarge on that a little bit and explain it. When the Trenton plant was closed down, the manager of the Trenton plant was transferred to Washington. 2547

Q. You mean the one who had been running the Trenton plant? A. The one who had been running the Trenton plant, yes.

Mr. Gross: Not as manager?

The Witness: Not as manager, but as assistant manager, and the then manager of the Washington plant apparently did not care for the move, and began to put obstacles in the way of the Trenton man. I believe another factor

2548 was that the two porcelain companies were using a different mix of porcelain. One mix—you will understand that when porcelain is fired in the kiln there is a shrinkage, and one mix had eight sixty-four thousandths and the other had a shrinkage of nine sixty-four thousandths and they apparently got mixed up in their raw material; and we had the most difficult time in getting porcelain.

The second thing was that we had great trouble in getting additional labor. The Washington plant is a few miles out of Hackettstown, New Jersey, and most of the labor we recruited from the farms around about there, and of course we had to have additional labor, and they had to bring green hands off the farms, and what with their mix-up in labor and mix-up in material, we had a fine hodge-podge. Still, if we had been obliged to separate the two porcelain plants the cost would have been tremendous. While the economies did not work out as we anticipated, we would have been much worse off if we had two plants.

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2550 Q. When was this tumbler switch put on the market where you say you estimated a saving of $35,000 a year? A. The switch was developed or had been developed by December, 1929, but I can't say when it was actually put on the market without consulting the records.

Q. And who developed it? A. I understand that Mr. Guett was instrumental in developing the switch, although I will say that this is outside of my department, and I can't say for certain.

Q. The figure that you gave is based upon a per unit differential between the cost of the new switch

compared with the older models of both Arrow and Hart & Hegeman multiplied by the number that were sold during 1930? A. The number that were expected to be sold in 1930 based on sales for the first ten months.

Q. The saving in paper boxes, was that brought about by purchasing in large quantities? A. No, at that time the Arrow Electric Company made its own paper boxes and the Hart & Hegeman made its own paper boxes. The Hart & Hegeman set-up was a little different, in that they practically paid for these boxes under a fixed price—they had a fore- 2552
man in the Hart & Hegeman factory who employed his own labor.

BY MR. GROSS:

Q. That is what is known as the contract system in Britain? A. The contract system. We paid him so much a thousand.

BY MR. HAYCRAFT:

Q. How did the Arrow purchase their boxes? A. The Arrow made their boxes right out here.

Q. What change was made, and when? A. The change was made in June, 1929. Most of the ma- 2553
chinery that was used in making the Hart & Hegeman paper boxes was found to be obsolete, and we paid off this foreman who was working on this so-called contract, and we brought over from the Hart & Hegeman such machines as we could use, bought the box-making material in larger quantities, and put the whole thing under one superintendent.

Q. How did you arrive at that saving? A. There are a lot of figures here. If you want me, I can give you all these.

(Discussion off the record.)

2554 *Thomas A. Inch—Recross.*

Q. Can you make the same statement on that? A. Hart & Hegeman boxes: The payroll prior to the change was $1,200 a month, including the foreman, but at that time the Hart & Hegeman were selling about one fifth of their production outside, to small candy manufacturers, so the payroll applicable to boxes for Hart & Hegeman was $960.

Q. Per month? A. Per month. We replaced these people, and it cost $523 per month, a saving of $437 a month, or $5,244 a year. The Hart & Hegeman were using a board in these boxes which
2555 cost them $56 a ton. That is the material out of which their boxes were made. The Arrow were using a board which cost them $38.50 a ton. The saving per ton, therefore, was $17.50. The new board produced about 10 per cent. more square feet than the old board, making an additional saving of $3.85 a ton. So the total material saving per ton was $21.35. The tonnage used was 285 tons annually. Therefore the saving of $21.35 a ton gave a saving on material of $6,084.75. The total saving to that point in material and labor was $11,328.75. When we brought the boxes over here we installed a new machine which creased the paper stock, instead
2556 of scoring or cutting it part-way through. This permitted the use of a board stock .039 inches instead of .050 inches thick for both divisions. This saved 20 per cent. further in the quantity of material used.

Q. Was this new machine sufficient to make them for both companies? A. Yes. The Arrow were then using 500 tons, and they brought their consumption down 100 tons, or a saving of $7,100 a year. I think I have already given you the $11,328.75, which makes a total saving of $18,428.75.

Q. How much of that do you think Hart & Hegeman could have saved by putting in a machine of

their own? A. I don't think they would have been justified in making that expense of $3,700 on this new machine.

Q. It would not take long to save the price of it, however? A. I couldn't tell how long it would take.

Q. I just wonder whether that is a really fair saving, where it is a matter which could have been done from a business standpoint. I give the organization credit for having sufficient acumen to recognize a leakage there in their own organization: A. I will answer that question. The fact remains that Hart & Hegeman had had this foreman a good many years. While this machinery had been in existence for some time, they never availed themselves 2558
of it. I was present at an interview between Mr. Grier and this so-called contractor when he was paid off, and he gave very clearly to understand that the Hart & Hegeman management had informed him that his services would be used indefinitely. In other words, there was a distinct understanding that it was contemplated that he would continue to manufacture boxes for Hart & Hegeman for many years.

Q. I just wanted to ask you as an expert in this line of work whether or not you did not put it on a different basis than, for instance, the saving that 2559
was made in the joint manufacture of sockets, where it is clear you can trace right down the increased production which would be reflected in low unit cost. A. I will concede there is a possibility that they might have made a saving, but the probability is not there.

Q. Now, this automatic screw machine $18,000 per year item. A. I will try to give a brief summary of the conditions as they then existed.

Q. You mean in October, 1927? A. Before the consolidation of the department.

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Q. When was that? A. The consolidation was accomplished some time in 1930. At the beginning of 1930 there were 112 automatic screw machines of various types, 76 per cent. of the total being in the Hart & Hegeman plant and 24 per cent. at the Arrow plant.

Q. These machines were used in making parts of switches? A. Yes, automatic screw machine parts. I don't know that I can describe them exactly. They make the brass parts of switches and sockets. The consumption per year was 1,600,000 pounds

2561 of brass and steel rod. 77 per cent. of this consumption was by the Hart & Hegeman factory and 23 per cent. by the Arrow factory. The total number of people then employed on those machines was 42; total direct labor $46,000 per year; the total indirect labor, $25,000 per year. From this it shows that Hart & Hegeman was operating 76 per cent. of the equipment with 69 per cent. of the employees and consuming 77 per cent. of the raw material. The direct labor from these parts was costing the Hart & Hegeman $23 per 1000 pounds of material, and costing the Arrow $46 per 1000 pounds of material, the Arrow consuming 23 per cent. of the

2562 material, 385,000 pounds. If the material they consumed could be produced at $23 per 1000 pounds direct labor, as in the Hart & Hegeman plant, the direct labor saving would be $8,850.00. The handling of the raw material at that time was bad in both plants, but particularly so at the Arrow. I can't recall the details, but I think that the brass rod was handled three or four times before it got to the automatic screw machines. We were very much crowded in the basement here and had no place for the raw stock, and it was taken to substock rooms, and handled several times. It was

proposed to erect a freight elevator at the Hart & Hegeman plant for the most economical handling of this material, to be delivered straight from the stock rooms to the automatic screw machine department.

A brief summary of the saving is given as follows:

Lowered labor cost, $6,750.

Reduced inventory of raw materials carried, owing to the elimination of duplicate stocks in each plant, with 6 per cent. thereon, $1,800.

The total elimination of indirect labor at the 2564
Arrow plant, $5,900.

Q. By that you mean that this same material could be made at the Hart & Hegeman plant and do away with the labor entirely? A. Yes, doing away with the direct labor here entirely and having enough labor at the Hart & Hegeman plant to run the whole thing.

Q. What was the $8,850. at the beginning that you mentioned? A. That was reduced afterwards on the number of employees to $6,750.; indirect labor $5,900., and Mr. Ten Eyck has worked in $4,400., representing better service, a more direct distribution to all departments, as well as handling 2565
charges, but I can't see any substantiation of that figure here. That makes up the total of $18,850.

Q. Your total would be right around $12,000.? A. Yes, but I have no doubt—I am not familiar with the details. Mr. Ten Eyck would substantiate the $4,400.; otherwise they would not have put it in. I have a further report here that was made in March, 1930, after the combination of the automatic screw department had been effected.

Q. What have you been giving are estimates? A. Yes. Now, we have the report. I would like to

2566 *Thomas A. Inch—Recross.*

read extracts from this report. Preliminary report made March 1, 1930.

Q. How long had it been in effect at that time? A. Probably a month.

Q. About a month? A. Yes. In 1929 the total number of people employed by the two automatic screw divisions was 42; average weekly payroll $1,500. In the week ended February 15, 1930, it was reduced to 25 people; average weekly payroll $660., showing a reduction in people of 10 per cent. and a reduction in dollars of 56 per cent.

2567 Q. How about output? A. I am coming to that now. The reduction in hours, 20 per cent. of normal. In 1929 the total indirect labor for the two automatic screw divisions was $25,400. At the present time, that is, February, 1930, the indirect labor was $15,000., or $10,000. less than in 1929. On full time this will amount to $18,600., or $6,800. less than before the consolidation. In other words, they estimated an indirect labor saving of $5,900.; they actually got $6,800. This report, which was made a month after the combination of the departments states that the estimated economy of $18,850. looks as if it will be achieved.

2568 Q. How about the comparison of the output of the material from these machines as compared with 1929? A. Well, I don't know how we can measure it. I don't know if we can measure the output of the automatic screw machine department.

Q. Is it your report there that 25 people did as much work as the 42 in the old system? A. Produced as many finished units. The reduction in people was 40 per cent., from 42 to 25; the reduction in the number of hours of work was only 20 per cent. Now the output in that department is.

doubled almost entirely by the number of hours work.

Q. You attribute that to more efficient labor, or to what? A. More efficient handling; keeping the machines on full time; no breaking up of jobs; no special setting-up charges, and I should say a closer supervision by having it done under one roof.

Q. Those are the principal factors, then? A. Yes.

Q. This putting of screws in envelopes, that is purely a new development, that $30,000 per year 2570
saving? That was something that you worked out very recently? A. No, the machine for doing this had been in successful operation in the Arrow plant for several years. The Hart & Hegeman had never introduced it. In February, 1930, it was proposed to introduce it in the Hart & Hegeman plant, the same automatic machine as in the Arrow.

Q. Was any portion of that difference due to increased production, or anything of that kind? A. I would say that it was one of those things which occurred after we had a thorough opportunity to get together the factory superintendents and having them examine each other's methods. Each fac- 2571
tory was making several thousands of different items, and in certain methods and machinery the Hart & Hegeman was a good deal better or superior; on the other hand, the Arrow had several ideas—

Q. That is something that you might get from association with other officials. You might get it from some other plant. It is nothing that is necessarily due to result or come about from a merger of this kind. A. That is true, except that Arrow

2572 *John W. Saladine—Direct.*

had had this machine in operation, and Hart & Hegeman—

Q. Had not been benefiting by it all this time. Now, I can see a distinction, it seems to me, between a case of that kind and a case in the sockets. An increased production would naturally bring down the cost, which might not necessarily come out of joining forces. A. It is possible that they might have stumbled on it.

Q. Now, your automatic screw drivers, the saving of $20,000 per year. A. That is something
2573 that Arrow could not have gotten anywhere else. It was patented. They swing on long shelves, and they work automatically, putting in the screws.

Q. That is an invention of Mr. Guett's? A. Yes.

Q. And this $20,000., is that a saving by the Arrow people after they adopted the use of this machine? A. Yes.

Q. When was that? A. They started to put them in this factory about the beginning of 1930.

Q. In the Arrow factory? A. Yes. The Arrow factory could not have gotten the use of the screw drivers otherwise.

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Mr. Haycraft: That is all.

JOHN W. SALADINE, was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. Your name, Mr. Saladine? A. John W. Saladine.

Q. Where do you live? A. 337 North Steele Road, West Hartford.

Q. What is your position in the new respondent? A. I am the only gentleman in this company without a title, I think. My duties are to be in charge of sales promotion and the merchandising of the jobber items.

Q. Before you were with the new respondent in the home office what was your office? A. I was manager of the Hartford branch of the Graybar Electric Company, as manager.

Q. How long were you there? A. When the 2576
house opened in August, 1926, until December 1, 1928.

Q. Then what did you do? A. I then was employed by the Hart & Hegeman Manufacturing Company.

Q. In what capacity? A. New England manager.

Q. With your office where? A. Boston.

Q. And then from being the H. & H. manager at Boston for Hart & Hegemen Manufacturing Company, you continued on while there with the H. & H. Division? A. Yes.

Q. Of the new respondent? A. Yes. 2577

Q. Until what date? A. A little after the 1st of September of last year.

Q. 1930? A. 1930, yes, sir.

Q. And then you came to the home office? A. Yes.

Q. As promotional sales director? A. Yes.

Q. In previous testimony which has been put in this case, reference has been made to the fact that since 1930 there are in some instances salesmen operating out of branch offices who handle both

2578 *John W. Saladine—Direct.*

Arrow and Hart & Hegeman lines. Are you familiar with that circumstance? A. I am.

Q. How many such men are there? A. They are four at the present time.

Q. Will you explain in a general way what the circumstances are that call for that method of salesmanship, and develop it, where they are and why they are? A. The first time that was done was when we established what we call a joint man in the State of Texas. The thought was that the business to be had in the State of Texas is few
2579 and far between; that is, distances are very great and the number of jobbers and contractors are comparatively few, and it was felt that we could cover the state economically. More important, perhaps, than that was the fact that both divisions have had jobbers established there for a good many years. There were very few jobbers springing up, as far as we could determine. In other words, our jobber channels were established. We thought, therefore, that one man could cover these jobber channels successfully, and of course save the company a considerable amount of traveling expense. The same thing is true of distributing in a large sparsely
2580 populated territory like that of the contractor, engineer, architect and specification market. I think the next man we established on that basis was in a similar territory, only closer to home.

Q. When was that done in Texas? A. I think it was only done about a year ago. Then, this year—it has always been expensive to cover the States of New Hampshire and Vermont. They are peculiar—I believe there are only four jobbers in the two states combined. There are a number of contractors doing the country wiring type of work. We there-

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fore established what we considered more of a contractor salesman, with headquarters at Springfield, to spend most of his time working north over the State of Vermont and the northern part of New Hampshire, driving a car, calling on the contractors, and he had one or two contractors in each little town and he had three or four jobbing accounts, some of them being Arrow and some of them H. & H. This man was doing contract work, and as the distribution was settled,—and I didn't know where we would get other distributors in a territory of that kind, we thought it would work out.

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We have just recently done the same thing in Maine, where the conditions are very similar to Vermont. The thought there was that—if I remember correctly, it cost $50 to $60 a week from Boston to cover the territory throughout the State of Maine. We figured that if we took the salesman and moved him to Portland and let him cover the contractors for both divisions that we could be in very much closer contact with the merchandising jobber and with the ultimate customers, the contractor, by having a man on the job for these divisions.

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The last case is an entirely different story.

Q. Was that last one in 1931? A. That was in 1931 as well, yes. The last one is where a man travels in the State of Connecticut. In Connecticut we have Bryant, Hubbell, General Electric and the Connecticut Electric Manufacturing Company, all manufacturers of wiring devices in Bridgeport, and in Hartford we have the Arrow Electric Division and the Hart & Hegeman Division of the Arrow-Hart & Hegeman Electric Company. There

are six or seven concerns manufacturing wiring devices right here in Hartford. If a contractor wants any merchandise he calls our service manager and says to ship 25 dozen or 50 dozen and bill it through such and such a jobber. Our salesmen travel in Bridgeport. We have one account down there, and with the exception of that we have a fat chance of getting any business. So we decided that it was rather silly in a state as small as this to have two men, when all that could be done was really missionary work.

2585 To the best of my knowledge those are the only four men of what we would call combination salesmen. Their duties, frankly, are chiefly as missionary men in widespread and sparsely-populated areas.

Q. Now, another point. As a result of your experience as a manager and as a promotional developer—counsel for the Commission has commented that one of the jobbers from Newark, I think, cited the case where one division sent in a man every two or three weeks and the other division only sent a man in perhaps twice a year. Will you explain wherein that is a proper cultivation
2586 of that territory as a matter of competition between the two divisions?

Mr. Haycraft: I object to the form of the question, Mr. Examiner.

Examiner Reeves: Do you contend that the question is leading and suggestive?

Mr. Haycraft: Leading,—extremely so.

(The last question was repeated as follows: "Q. Now, another point. As a result of your experience as a manager and as a promotional developer—counsel for the Commission has

commented that one of the jobbers from Newark, I think, cited the case where one division sent in a man every two or three weeks and the other division only sent in a man perhaps twice a year.")

Q. (Continued) Will you comment on that testimony as a matter of salesmanship of the two divisions and explain why it is done? A. I think electrical jobbers as far as the manufacturing of wiring devices is concerned, more or less classify themselves into—can be divided into three classes. 2588
We have some, and our competitors have some, of what we would call 100 per cent. jobbers, that is, of wiring devices they handle either Arrow material or Hart & Hegeman material or Bryant material or Hubbell material, and so on,—General Electric or Westinghouse. Then there are jobbers—by the way, that is a fairly small class.

Q. You mean in number? A. In number—no, that is not true exactly. I think there are more small jobbers than there are large ones. Then there is the second class, whose preponderance is for one manufacturer, but they may carry one or two of another manufacturer's material.

Q. And then, sad to relate, but by far the great- 2589
est, are those who carry four or five or six lines of wiring devices. I ran into one recently in New York who had six. I think that is the limit. If the Arrow Electric Division had 100 per cent. customer, the chances are that the Hubbell Company or the Bryant or the Hart & Hegeman division would only call on that customer once every six months—perhaps once in three months, but they would call the least of all, as their only hope—whether Hart & Hegeman Division or G. E.—that

is their only hope would be that there would be some break in those relationships, and if there is some break, because you have contact you have got a chance to jump in on the jobber who has a preponderance. If one jobber had 80 per cent. H. & H., 10 per cent. Hubbell and 5 per cent. Arrow, or 10 per cent. Arrow, the Hubbell and Arrow men in that case would probably call once every sixty to ninety days. In the second class, that was, say, a Hubbell jobber, although we get some business, and so does Pass & Seymour, and because of the
2591 strength of the jobber you have got to deal with him to some extent. The third class is the one that they all call on, and they call on fairly often. Frankly, it is not profitable to anybody. Carrying a similar stock, five or six similar stocks, is a loss to the manufacturer; he gets no support, and it is a loss to the jobber through duplication of investment. We have good accounts that Pass & Seymour call on once in six months.

Q. How often would Hart & Hegeman salesmen or H. & H. salesmen—either from the company or the division in the two periods—call on a good substantial H. & H. jobber? A. I am trying to
2592 think of a specific case that I had in my own field experience that would prove that in. Formerly, when I was in Boston, the Leon Electric Company was an Arrow jobber, although they carried Hubbell—probably 90 per cent. Arrow and 10 per cent. Hubbell. I believe I called on him three or four times a year. Now, it happened that there was a break there in that company. I didn't get it. It went to the Bryant Company, but it was a financial break, because Westinghouse purchased the assets of the Leon Electric Company, but that break was rumored for 60 days—and they were flying in

thick and fast, and you will find a Hart & Hegeman salesman there every week or ten days, merely on the rumor that got around in the trade.

Q. I asked how often a salesman would call on a regular Hart & Hegeman jobber of substantial importance. A. That depends on the nearness of the jobbers to the salesman's home. I would say it would average once every ten days, maybe two weeks.

Q. From your experience as manager for a jobbing concern, and from your general familiarity with the electrical business generally, do you know 2594
of any instance—a well known instance where one concern put out substantially the same product under two separate brands with two separate sets of salesmen who are competing with each other?

Mr. Haycraft: That is objected to for about all the reasons that I can muster. It violates every principle of direct examination; first, objection is made on the matter that it is incompetent, irrelevant and immaterial to the issues in this case. It calls for a conclusion of the witness based upon facts which are not in the record; it is a conclusion that the Commis- 2595
sion must draw itself from the facts as elicited in the record.

Mr. Gross: I asked him whether he knows of circumstances other than this one.

Examiner Reeves: Objection overruled.

(The last question was repeated by the reporter.)

Mr. Haycraft: I renew my objection.

Examiner Reeves: I think that part of the question which states that two sets of salesmen are competing with each other--

Mr. Gross: Take out "competing with each other".

A. May I ask a question? I am not just clear—you mean as manager for Hart & Hegeman or as a manager?

Q. As a result of your experience do you know of any such case?

Mr. Haycraft: The question now is, "a manufacturer that had two divisions with separate sales forces"?

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Mr. Gross: Yes. Do you object to that?

Mr. Haycraft: I object to that as incompetent, irrelevant and immaterial. I don't know that it has any value in the case, and it probably opens a line of examination which, if carried to the extreme, will require me to go to some extent in rebutting, and which should not be brought into the case.

Mr. Gross: I am trying to show a parallel case to the issues in this case.

Mr. Haycraft: If there is another instance, what has that got to do with this case?

Examiner Reeves: The witness may answer.

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A. I do.

Mr. Haycraft: Exception.

Q. Can you state the circumstances as you know them? A. It so happened that when I was with the Graybar Company they were a jobber of the National mazda lamps made by the National Lamp Works of the General Electric Company. At the same time we received perhaps our most serious

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competition from the Edison Lamp Works of the General Electric Company. The lamps of those two sales organizations are made in the same factory by the same machines. Of course, they are owned by the same company, and their thought was that they could get a greater share of the lamp business available by having two divisions, one known as the National Division and the other as the Edison Division, and those lamps are sold, from my experience, in bitter competition throughout the United States by various jobbers and agents.

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Mr. Haycraft: Now, Mr. Examiner, I move to strike out the answer of the witness. It is not responsive to the question as corrected under the direction of the Examiner, and also he is including in his answer the reasons and the state of mind of the manufacturers of the Edison General Electric lamps, outlining their policy and distribution, and it is entirely irrelevant to the question propounded, and not responsive.

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Mr. Gross: If your Honor please, I don't suppose my learned friend likes the answer. The gentleman says he was solicited by two separate sets of salesmen for the identical product under two separate names.

Mr. Haycraft: And then he gives the reasons for the conditions, referring to conditions that were existing between the jobbers, where he had no personal first-hand information.

Mr. Gross: I have no objection to the reasons being stricken.

Mr. Haycraft: That answer has no place in the record at all.

2602 *John W. Saladine—Direct.*

Examiner Reeves: The motion to strike will be denied except in part; that part of the answer of the witness in which reasons were assigned may be stricken.

The Witness: I think another exception should be made there. You said I was solicited by two branches. I wasn't solicited, because at that time my company had a contract with one of those divisions, but my competition was strongest from the Edison Lamp Works.

2603 By Mr. Haycraft:

Q. Through another jobber? A. Yes.

By Mr. Gross:

Q. Going back to the question of the four salesmen since 1930, who have been traveling in sparsely fertile territory, so far as business results were concerned, could the two divisions have afforded to travel two salesmen in these territories during that period so far as financial results with respect to the divisions are concerned?

2604 Mr. Haycraft: That is objected to as calling for a conclusion. I don't see any value to it, in addition to being incompetent, irrelevant and immaterial to the issues in this case.

Mr. Gross: I think this is one question this man has to decide, as to the best methods of getting the most business.

Examiner Reeves: The objection is overruled.

A. The study we made of the situation seemed to prove to us that it would be—that we could not

make a reasonable margin of profit and do a reasonable volume of business in that territory on that basis.

Q. But I understand that if only one salesman had gone into that territory, one of these salesmen, if he did not sell the goods of both divisions, he would naturally have been confined to only one division, and therefore the jobbers who handled the other division offered a better cultivation? A. We would do one thing or the other. That is, we had to try it the other way and found it not profitable to do so.

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CROSS EXAMINATION BY MR. HAYCRAFT:

Q. You say that those are the only four men that you know of that are known as combination salesmen. To your knowledge are there other instances in other places where with the permission of your district managers an Arrow salesman will take an order for a Hart & Hegeman article and a Hart & Hegeman salesman for an Arrow article, particularly in this instance where the salesman, whether he be Hart & Hegeman or Arrow, is calling on a customer who does not stock or handle, as far as you know, the other item.

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Mr. Gross: Since 1929.

Q. At the present time or any period back? A. I don't think so. I might add this, Mr. Haycraft, that frequently—not frequently, but sometimes, customers will send orders in,—and most orders are received in the mail, and not taken by the salesman from the jobber—where there will be listed H. & H. items. If it is an Arrow jobber, it will say, "Please ship H. & H.", probably at the bottom.

Q. Take these second jobbers: Isn't it customary, or isn't it permissible, or isn't it good business from your standpoint to have your salesman who calls regularly to transmit orders that they may have for the other division? A. We would get a stiff yell from the other salesman if we did that. If it was a building job, they will specify 80 per cent. Arrow and some Hart & Hegeman plates, or switches, and two orders would be made out. In that case that H. & H. salesman—say he went to work on that job to see to it that H. & H. was in those specifica-
2609 tions. He wouldn't get credit.

Q. Unless he called on the jobber— A. The jobber has no alternative in a case of this kind. The contractor is told by the specifier and the jobber is told by the contractor what brands he wants, and our salesman for H. & H. in this particular instance would be out of luck.

Q. What difference would that make so long as you got the business? A. These salesmen are hired, retained on the basis of the business they produce; a Hart & Hegeman salesman for what he produces and and Arrow salesman for what he produces. We are constantly sizing these men in the field on the
2610 basis of what they produce in the field. As a matter of fact, we are putting in a bonus system very shortly.

Q. I didn't think there was any question about it. A. The testimony ran that way in the jobbers—of course, we agree with the jobbers' testimony to that extent. The jobber will tell you that he does quite a lot of work selling the job, and we believe we do the work. Wiring devices are only 5 to 6 per cent. of that business, and the jobber is not going to spend a lot of time getting that business.

Q. By the way, to whom are you responsible? A. Mr. Grier.

Q. Not to Mr. Pond or Mr. Everest? A. No, sir.

Q. Have you issued any instructions to any district sales managers whereby they are to instruct the salesmen not to do a thing which I have just outlined as being indicated? A. Never in writing, but decidedly so in our sales conversations.

Q. What happens in the case if a Hart & Hegeman salesman runs across an order for Arrow products? What is he supposed to do? A. The first thing he is to do is to persuade him to take Hart & 2612
Hegeman. That, frankly, isn't very often successful.

Q. If it is a question of where a Hart & Hegeman is asking for Arrow goods? A. He will report that, of course, to his manager, that Arrow is specified.

Q. What does the manager do? A. Sends the Arrow salesman after it.

Q. Doesn't he create a rather—to follow the method you indicated, doesn't it sometimes create a rather slight unpleasantness between a Hart & Hegeman customer and Hart & Hegeman salesman, that he won't accommodate him to that extent? A. 2613
We had some argument to start with, but the trade is pretty well straightened out, and they kid these salesmen by saying, "I have an Arrow order, but I am sorry I can't give it to you." I have seen a Hart & Hegeman order come in and on the bottom it will say 50 Arrow products.

Q. You don't have any arrangement whereby the salesman who created that business with the contractor would get the credit for the sales made to the jobbers? A. No.

2614 *Harvey C. Pond—Recalled—Direct.*

Q. They must see the deal through? A. Yes. When he goes along the street and sees a hole in the ground, he ought to start right there—whose building is it, who is the owner—and that is where the real battle starts; right there, through the architects, contractors, and so forth.

Mr. Haycraft: I think that is all.
Mr. Gross: That is all.

2615 HARVEY C. POND, was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. Mr. Pond, can you produce the United States census figures for the electrical wiring devices as to the amount of it, by schedules? A. I have the printed f[illegible] which is issued for the 1927 business, and the preliminary report for the 1929 figures.

Q. That preliminary report is in mimeographed form? A. In mimeographed form, which came from
2616 the Government.

Q. It is an advance sheet of what the 1929 pamphlet is when issued? A. It is issued, but the issue has been exhausted, but it will be obtainable at the Bureau of Census.

Q. Will you give us the figures of the electrical wiring device industry for the years 1927 and 1929?

Mr. Haycraft: I object to that on the ground that it is incompetent, irrelevant and immaterial to the issues in this case, particularly in

view of the statement of the attorney for the commission that he was not intending to show that a monopoly had been created.

Mr. Gross: It is not a case of monopoly; it is a case of showing what proportion of the business of the industry we have got.

Examiner Reeves: Upon what, really, do you contend that it is material, since counsel for the Commission waived the clause in the complaint with respect to the tendency to create a monopoly?

Mr. Gross: My learned friend said that he would not waive any restraint of commerce. 2618

Mr. Haycraft: That would not have anything to do with the restraint of commerce.

(Discussion off the record.)

Mr. Brown: Mr. Haycraft contends that competition refers to competition between the two companies or the two divisions, whereas our contention is, and I think we have some authorities to back us, that competition refers to competition in the industry, as distinguished between competition between the two companies. These statistics show our proportion of the industry with all our competitors, and that will 2619 show the status competition has in the industry, and whether that competition has become more or less formidable, what we have to meet, and that sort of thing.

Examiner Reeves: The objection will be overruled. We will start on this line of testimony and see where it leads to.

Mr. Haycraft: Are you passing on the competency of the testimony also, the source, and so forth?

2620 Examiner Reeves: Are you raising the question of the competency of a Government publication?

Mr. Haycraft: Yes, in a proceeding of this character, primarily for the reason that I have not any opportunity of ascertaining how these figures are made up.

Mr. Gross: Nor have we.

Mr. Haycraft: In other words, in the first place, what they include; how the division is made, and what concerns enter into it. I am
2621 not saying it is not a correct report, but I am deprived of the opportunity of cross examination of the man who prepared that.

(Discussion off the record.)

Mr. Haycraft: For instance, if this report is allowed in without counsel for the Commission being allowed to cross examine the man who prepared the report, it will be impossible to determine the class of material and the quality of the material that go to make up the total figures, because as I know from my knowledge, these reports are prepared from a general questionnaire sent all over the country to every type
2622 of manufacturer, regardless of kind or quality of material that is manufactured. There is nothing to show the system of distribution; whether it is through jobbers or direct to manufacturers, or just how it is sold. So, to my mind, the figures represented in the reports haven't any evidentiary value at all to determine the issue we are trying to determine.

(Discussion off the record.)

Examiner Reeves: Objection overruled.

Mr. Haycraft: Exception.

(The last question was read by the reporter.)

Q. (Continuing) As taken from the bulletin, "Census of Manufacturers in the United States, Department of Commerce, Bureau of Census, covering electrical machinery, apparatus and supplies," published by the Government printing office in Washington, D. C. A. The census figures covering the total volume of business of the wiring device industry show for 1927 $32,703,331.

For the year 1929, $43,120,093.

Q. Now, will you give us the total combined sales of the Arrow Electric Company and the H. & H. Manufacturing Company in 1927, and of the two 2624
divisions of the new respondent for 1929, covering the same material? A. The combined sales of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company in 1927 make a total of $7,452,677. The combined business for the Arrow-Hart & Hegeman Electric Company, both divisions, in 1929, total $8,173,884.

(Discussion off the record.)

Q. Will you give us a list, or rather a partial list of other concerns who make electrical wiring devices in this country, which products come within the 2625
schedules that we have here, covering the product of this country?

Mr. Haycraft: I object to this type of testimony on the ground it is incompetent, irrelevant and immaterial to the issue, and particularly in view of the statement made by counsel for the Commission that there is no tendency to create a monopoly.

(Discussion off the record.)

A. This was compiled March, 1929.

2626 *Harvey C. Pond—Recalled—Direct.*

Alcor Mfg. Company, Sockets.
Fargo Elec. Mfg. Company, Sockets.
Paragon Elec. Mfg. Company, Switches.
Deal Elec. Company, Attachment Plugs.
General Electric, All.
Westinghouse, Panel Board Switches.
Hubbell, All.
Pass & Seymour, All.
Weber, All.
Connecticut Electric, All.
Hemco, Molded.
2627 Circle F., All.
Paulding, All.
Leviton, All.
Gaynor, All.
Standard Electric Mfg. Company, All.
Monowatt, All.
H. Hyman, Switches.
Ratner, Specialties.
Benjamin, All.
McGill, All.
Reynolds Spring, Molded.
Beaver, All.
Cutler Hammer, All.
2628 Hart Mfg. Co., Switches.
Roberts, Sockets—Specialties.
Metropolitan, Receptacles and switches.
Colts, Cut-outs and taps.
Trumbull, All.
Economy Fuse, Sockets and fuse plugs.
Bussman Fuse, Sockets and fuse plugs.
Chicago Fuse & Wire, Sockets and fuse plugs.
Meteor, All.
Rodale, Switches.
Propp, Molded material.
Eagle, Receptacles and plates.

Hoosick Falls, Plates and material.
Saturn, Switches.
The Elec. Company, Attachment plugs.
Federal Elec., Sign receptacles.
Crouse Hinds, Control panel board switches.
H. J. White, Candle sockets.
Frank Morse, Molded material.
Perkins Marine Lamp, Flush receptacles.
Siemon Mfg. Company, Sockets.
T. C. Smith Company, Attachment plugs.
Knox Porcelain Co., Porcelain receptacles.
Treule Porcelain Co., Porcelain receptacles. 2630
Wood Elec., Receptacles.
National Metal Molding, Receptacles.
Appleton, Sign receptacles.
Quadrungle Elec., Porcelain.
Ajax, Composition.
U. S. Elec. Company, Sockets.
Utilo, Plugs.
Carling Mach. Company, Switches.
Heineman, Porcelain.
Barber Elec. Mfg. Co., ?
Bulldog, Panel Boards.
King Mfg. Co., Bklyn., cut outs.
Trumbull Vanderpool, Control switches. 2631
Bryant Elec. Co., All.
Frank Adams, Panel switches.
Acme, Porcelain sockets.
American Brass, Shareholders and plates.
Waterbury Brass Goods Co., Plates.
Trenton Elec. Mfg. Co., Switches and receptacles.
Francis Keil, Switches and plates.
Brewer Elec. & Mfg. Co., Switches.
Marks Products Co., Switches.
Conn. Molded Products' Plugs.
Trico Fuse Co., Fuse plugs.

2632 *Harvey C. Pond—Recalled—Direct.*

Chapin Co., Receptacles.
Armstrong & White, Receptacles.
Best Elec. Co., Receptacles.
Yaxley, Radio receptacles.
All radio part manufacturers. All baby knife switch manufacturers.

This list has been compiled from personal knowledge of the sales executives added by trade paper classified lists of manufacturers and the Underwriters' list of approved fittings.

2633 Q. I show you a record book and ask you what corporation that relates to? A. The Arrow Manufacturing Company.

Q. Were you one of the incorporators of that company? A. I was.

Q. Were you a director and secretary of the company? A. I was.

Mr. Gross: I desire to offer the record book of the corporation in evidence, as in the other case, that it be marked and then I will, with the permission of the Court, substitute the copy.

2634 Examiner Reeves: This book may be received in evidence as Respondent's Exhibit 30, with leave granted to withdraw the original and substitute a copy, which is Exhibit G, attached to the answer to the supplemental complaint.

(The book referred to was thereupon marked "Respondent's Exhibit 30 for identification".)

Q. I show you, Mr. Pond, Exhibit G, entitled, "Copy of minutes of the Arrow Manufacturing Company, which is attached to the answer of the new respondent to the supplemental complaint, a copy of which answer you have seen, and which I have

in my hand, and I ask you whether Exhibit G attached to the answer is a full complete copy of everything which is in the record book of the Arrow Manufacturing Company? A. It is.

Mr. Gross: Now, Mr. Examiner, may Exhibit G, for purposes of economy, be marked?

Examiner Reeves: This may be marked Respondent's Exhibit 30, and will be received in evidence in lieu of the original record.

(The book referred to was thereupon received in evidence and marked "Respondent's Exhibit No. 30".) 2636

Q. Were you present at every meeting of that corporation? A. I was.

Q. Does the book contain every corporate act taken by the Arrow Manufacturing Company? A. It does.

Q. And does it contain every agreement made and every obligation undertaken by that corporation? A. It does.

Mr. Gross: You may inquire.

CROSS EXAMINATION BY MR. HAYCRAFT: 2637

Q. Who prepared the minutes? A. They were prepared by counsel for—Mr. Shipman—he was counsel—in conjunction with, I should say, myself.

Q. Who dictated it? A. I presume counsel, Mr. Shipman.

Q. And he presented it to you? A. Yes.

Q. You looked them over and signed them? A. Yes.

Mr. Haycraft: That is all.

BY MR. GROSS:

Q. Not only did you look over them and sign them, but can you say that every vote passed and every election had was actually done in your presence? A. That is true.

Q. In other words, those minutes record actual happenings at meetings as stated therein? A. Yes.

BY MR. HAYCRAFT:

Q. With reference to the time at which those things were done, when were the minutes prepared,
2639 before or after? A. I imagine they were prepared before principally, and probably corrections were made afterwards.

Q. Who was president at that time? A. Mr. Grier.

Q. Did he take an active part? A. He was present at all the meetings.

Q. Did he take an active part? A. Just as active as any.

Q. Do you know the purpose of the meetings? A. The purpose of the meetings?

Q. Yes. A. Chiefly to consider the plan of reorganization, so as to get back the stock.

2640 Q. Who presented that plan at the meeting? A. I should say Mr. Shipman.

Q. And was that the purpose of the organization of the corporation? A. I understand it to be so, yes.

Q. And every step that was taken there in the meetings was taken upon advice of Mr. Shipman? A. Yes.

Mr. Haycraft: That is all.

Mr. Gross: That is all.

(Discussion off the record.)

BY MR. HAYCRAFT:

Q. On this list of manufacturers—or partial list of competitors that you read into the record, did you say you compiled that in March, 1929? A. Yes, that was prepared from trade paper directories and from the underwriters' list of approved fittings, and in conjunction with our own outside sales managers.

Q. Where is the Alcor Manufacturing Company located? A. Chicago.

Q. Do you have any information as to its size? A. It is a small concern manufacturing candle sockets. 2642

Q. Where does it sell them? A. Sells them chiefly to manufacturers.

Q. And over what territory? A. Throughout the country, interstate commerce.

Q. Can you testify from your own observation as to what class they sell to chiefly? A. Chiefly fixture manufacturers.

Q. Do they sell to jobbers? A. I don't know, but I imagine very little.

Q. Do you know anything about the number of salesmen they travel or what they cover? A. I don't know anything about that. I think they handle it on commission. 2643

Q. The Fargo Electric Manufacturing Company? A. I don't know.

Q. The Paragon Electric Manufacturing Company? A. I don't know them.

Q. Do you know where they are located? A. No, sir.

Q. The Deal Electric Company? A. Deal is in New Jersey.

Q. To what class of trade does it sell? A. Attachment plugs.

Q. To what class of trade? A. I should say the same general class of trade we sell to; possibly some jobbers and some manufacturers.

Q. Do you know anything about the size of it? A. No.

Q. Have you reports from your salesmen as to the extent of their distribution? A. No. Every once in a while we get a report where we are up against the price from the Deal—usually underneath us.

2645

Q. Where is that? A. Chiefly in the New York territory.

Q. The G. E.—The General Electric Company; they have already testified in this proceeding. They manufacture and distribute the full line? A. Yes.

Q. The Westinghouse, the same? A. The Westinghouse, of course, owns the Bryant Electric Company.

Q. Hubbell, the same? A. Yes.

Q. Pass & Seymour. Do they sell through jobbers also? A. Yes, practically the same policy as we have.

Q. Weber? A. The same.

2646

Q. Connecticut Electric? A. They are operating under receivership now. At that time they were active chiefly in bakelite plugs and receptacles. Practically a complete line in that line.

Q. How would they compare with Pass & Seymour, Weber and Hubbel, and so forth? A. I would say they were half the size of the Weber Company.

Q. How does Weber compare with your own firm? A. I should say Weber is about half the size of the Arrow Electric Company.

Q. How would Pass & Seymour compare? A. In between Weber and ourselves.

Q. Hubbell? A. That comes a little closer to the Arrow Electric or Arrow Electric Division.

Q. How would you compare yourself with Westinghouse and General Electric? A. You are speaking of the merged company?

Q. Yes. A. I should say the present company would probably do business on parallel lines perhaps slightly greater than either the Bryant or General Electric Company, but not as much as the combined companies.

2648

Q. Hemco? A. At that time it was an independent manufacturer of bakelite plates. Since that time it has been bought by the Bryant Electric Company.

Q. Its product were plates exclusively? A. Plates and molded attachment plugs.

Q. Is that a small or a large concern? A. It was a large concern for the class of business it was doing.

Q. How did it distribute it? A. Through the jobbers.

Q. Circle F.? A. Circle F. is a trade mark name for the old Freeman Electric Company, manufacturing in New Jersey. Practically parallel lines with our firm; operating through jobbers; sometimes direct to manufacturers. Not as big as our company.

2649

Q. Are they still in busines? A. Yes.

Q. How does it compare? A. They are quite a factor in the present business.

Q. How does it compare in size? A. I haven't any definite information on that point, but I should say fairly respectable. Fine equipment and tools. It is a responsible concern, but not large.

Q. Is it as large as either division? A. Not as large as either division.

Q. Paulding? A. They are located at New Bedford, Massachusetts. They manufacture practically a complete line, specializing in switches, sockets and porcelain material of various kinds. They have been in business for a number of years.

Q. How do they distribute? A. Chiefly through jobbers.

Q. How does it compare in size with your firm? A. Just as the Circle F.

2651 Q. Leviton? A. Leviton Manufacturing Company is a concern operating chiefly—or distributing chiefly to fixture manufacturers and selling material to jobbers and to manufacturers. Identical line to ours and doing business which probably closely approximates either of the two divisions.

Q. How does their material compare with that put out by your company, in quality? A. It is not recognized as equal.

Q. What would be true with Paulding and Circle F.? A. The same thing.

Q. Where is Leviton located? A. I think in Brooklyn.

2652 Q. Gaynor? A. Gaynor is located in Bridgeport, Connecticut.

Q. What class of trade? A. Chiefly jobbers—practically entirely jobbers.

Q. The full line? A. No. They specialize chiefly in brass plates, although they have gotten into the manufacturing of switches. I don't think they make any sockets.

Q. How do they compare in size? A. They are smaller.

Q. The Standard Electric & Manufacturing Company? A. They are located in Chicago.

Q. The full line? A. Not in sockets; mostly in switches and porcelain receptacles, but not brass shell sockets, and they have recently come into the field on bakelite plates and bakelite receptacles, and have become much more active on switches. They are coming along fast. They are rapidly increasing.

Q. What class of trade do they sell through? A. Jobbers.

Q. How do they compare with your concern? A. They have other lines; also boxes, and other material of that character, and they are coming along 2654 nicely.

Q. Is it just as large as either of your divisions? A. Half as large, in so far as parallel lines are concerned.

Q. How about Monowatt? A. Very good, but underselling us.

Q. Monowatt doesn't sell much to jobbers? A. Practically nothing.

Q. How does Monowatt compare in size, say, with Standard? A. They might be just about the same, I guess.

Q. Hyman? A. I don't know them.

Q. Ratner? A. Ratner is now out of business. 2655

Q. What did he manufacture when he was in business? A. He manufactured canopy switches and candle sockets.

Q. Where was he located? A. I think he was in New York.

Q. Benjamin? A. He is located in Chicago. They parallel us only partially; chiefly on attachment plug material and weatherproof sockets. They make a very extensive line of reflectors. They are a large concern, but so far as they compete with us, it is only a small part.

Q. How do they sell? A. Through jobbers.

Q. McGill? A. McGill is located in Valpariso, Indiana. He manufactures sockets and switches. He is not anywhere near as large as our company, but he does a very nice business.

Q. Reynolds Spring? A. Reynolds Spring was another manufacturer specializing chiefly on plates, attachment plugs, and material of that sort; not the sockets or switches.

Q. Did they do a substantial business? A. They were bought out by Cutler & Hammer. At that
2657 time they were in competition.

Q. Through what class of trade did they sell? A. Jobbers.

Q. Manufacturers, too? A. No.

Q. Beaver? A. He is located in New Jersey. More or less specialty manufacturers, and competes with us chiefly on cord switches attachment plugs, and canopy switches.

Q. How does he compare in size? A. He is a very substantial competitor. He is a good manufacturer.

Q. How does he distribute? A. Through jobbers and some sales direct to manufacturers.

2658 Q. Cutler-Hammer? A. Cutler-Hammer practically parallels our entire line; practically everything.

Q. What class of trade? A. Jobbers, and in some cases direct to manufacturers.

Q. How does the volume compare? A. The volume is not large, but they are practically new in the game, trying to break in.

Q. Quality? A. Good.

Q. Hart Manufacturing Company? A. Well, they are an old-time switch manufacturer who has gone into specialty manufacture, but they still have

a certain amount of business on door switches and also lighting switches.

Q. Rather small? A. They are very small as far as they compare with us. They are in Hartford.

Q. Where are the Roberts located? A. I don't know.

Q. The Metropolitan? A. Metropolitan, I think, is in New York. Chiefly on attachment plugs.

Q. What class of trade? A. I don't know.

Q. Colts? A. Colts is in Hartford.

Q. How does it sell? A. I imagine they sell and compete chiefly on the appliance end of the business. They don't compete greatly on the shelf goods. 2660
Chiefly on snap switches and fuses, and which we do not go very heavily.

Q. Trumbull? A. Trumbull at that time manufactured surface switches and flush switches.

Q. Where are they located? A. Plainville, Connecticut.

Q. What class of trade? A. Jobbers.

Q. How does it compare with your concern? A. They are now a subsidiary of the General Electric Company, and they are not competing with us on that material, making only the panel board units.

Q. Economy Fuse? A. Economy Fuse is located 2661
out in the West, I think in Chicago, and they compete chiefly on fuse blocks.

Q. Are they large? A. A large concern, but so far as they compete with us, that part of the line—competition is not very extensive.

Q. Buffman Fuse? A. The same history. A big concern, but competing only on one or two devices.

Q. Chicago Fuse & Wire? A. That is the same situation.

Q. Meteor? A. Meteor, chiefly sockets and canopy switches. As I understand it, it has been bought out by Leviton.

2662 Q. And sells to the same class of trade? A. Yes, as Leviton.

Q. Rodale? A. Rodale competes with us on the same sort of control items, that is, canopy switches, attachment plug material and flush receptacles, but not lighting switches or sockets.

Q. What class of trade? A. I don't know.

Q. A small concern? A. A small concern.

Q. Propp? A. Propp, chiefly attachment plugs and Christmas tree lighting outfits. Big concern but competing only on a limited degree.

2663 Q. Eagle? A. Eagle is practically the same sort of concern, manufacturing attachment plugs; located in New York.

Q. Hoosick Falls? A. Located in upper New York State. They manufacture chiefly molded material, competing with us on attachment plugs and convenient outlets.

Q. Sell through jobbers? A. Yes.

Q. A substantial concern? A. A small concern, but substantial competition due to the fact that they have a good product which undersells us.

Q. Saturn? A. I don't know them.

Q. The Electric Company? A. The Electric Company is in Hartford, Connecticut, and competes

2664 with us chiefly on attachment plugs.

Q. Is it a large concern? A. It is a small concern, but they have designing ability which crops up every now and then in the way of a control switch on such things as toasters and material of that kind, which we feel once in a while.

Q. Federal Electric Company? A. I don't know them.

Q. Crouse Hinds? A. Crouse Hinds chiefly manufacture fittings. That is, they manufacture these street signs, and they manufacture, or they have

manufactured for them, switches and receptacles that will go on these fittings, for which we are also manufacturing.

Q. A large concern? A. A large concern; a very large concern, but small competition.

Q. H. J. White? A. H. J. White is a manufacturer of candle sockets, a small concern. I think they are located in New York. Not a very big competitor.

Q. Frank Morse? A. In Boston. He is chiefly a competitor on attachment and molded material.

Q. Large or small? A. He is fairly large. 2666

Q. Perkins? A. I don't know about them.

Q. Simeon Manufacturing Company? A. They are located in Bridgeport, Connecticut. He manufactures molded material and competes with us on weatherproof sockets.

Q. A substantial concern? A. substantial molding concern, and has quite a market on material in which he competes with us at a lower price.

Q. To what class— A. Jobbers.

Q. How would you compare with him in volume of sales in sockets, for instance? A. He only competes with us on one or two items.

Q. Knox Porcelain Company? A. The Knox 2667
Porcelain Company at first was a manufacturer of porcelain, and then they started to break into the wiring device line, specializing chiefly on material of which porcelain is the big factor, manufacturing lamp receptacles, porcelain sockets, porcelain receptacles of all kinds, and they recently added to their line a lot of molded material. Therefore they practically compete with us all the way through, only at very much lower prices.

Q. What class of trade? A. So far as I know, to the jobber entirely.

2668 *Harvey C. Pond—Recalled—Cross.*

Q. What about the quality? A. The quality is not as good as ours.

Q. How about the Treule Porcelain Company? A. I don't know anything about them.

Q. Wood Electric Company? A. C. D. Wood Electric Company, like a lot of the other companies, started in a small way, making a few items, and then added a few more, until they represent quite a substantial competition so far as the items paralleling our lines are concerned. It is a small concern, but considerably bothersome.

2669 Q. What class of trade? A. Jobbers.

Q. Where did you say they were located? A. In New York City.

Q. The National Metal Molding Company? A. They are like Crouse Hinds. They are a large concern manufacturing chiefly fittings that go on their own products, for which we also manufacture devices. In addition, they put out an outlet which competes with our convenience outlets.

Q. What class of trade? A. Jobbers.

Q. Appleton? A. Same class as National Metal Molding.

Q. Ajax? A. I don't know them.

2670 Q. Quadrangle Electric Company? A. They manufacture receptacles of various kinds, which compete with our flush receptacle line.

Q. Where are they located? A. I think they are in the West. I don't know exactly.

Q. Small or large? A. Small.

Q. They sell to what class of trade? A. I imagine to jobbers.

Q. The U. S. Electric Company? A. Started in a small way and has grown rather large. They are very substantial competitors on receptacles and attachment plugs, mostly molded material, not extending into switches and sockets.

Q. Utilo? A. Utilo is now out of business. At that time it was manufacturing attachment plugs, and proved to be quite a disturbing factor as to price.

Q. What class of trade did they sell to? A. They sold to anybody they could sell to.

Q. Small or large? A. Small.

Q. Carling Machine Company? A. Hartford, Connecticut. They manufacture attachment plugs and special switches, which would compete more directly with our appliances. A small concern.

Q. Heineman? A. I am not sure whether he is 2672
a manufacturer or a manufacturer's agent, but I think he has selling jobber rights for several concerns, among which is a flush switch, which is rather a cheap product, selling cheap prices.

Q. The Barber Electric Manufacturing Company? A. I don't know them.

Q. The Bulldog Company? A. Bulldog is a big concern, but I think they manufacture chiefly snap switches. I don't know where they would come in with competition with us.

Q. Where are they located? A. I think Chicago.

Q. King Manufacturing Company, Brooklyn? A. I don't know.

Q. Trumbull Vanderpool? A. Trumbull Vander- 2673
pool at that time manufactured plug cut-outs and switch gears of various kinds and descriptions. He has bought out Cutler Hammer now.

Q. What class of trade did it sell to? A. Jobbers.

Q. Substantial in the industry? A. So far as our line was concerned, they did not offer a great deal of competition.

Q. Frank Adams? A. Frank Adams manufactures panel board switches, competing with our appliance department. I think they manufacture fan hangers.

Q. Acme? A. I don't know.

Q. American Brass? A. American Brass & Copper Company, I think the name is; chiefly brass plates of all descriptions. A big name and a big brass manufacturer and very low in price.

Q. Sells to what class of trade? A. Jobbers.

Q. How do they compare in volume of sales? A. I would say they have us lashed to the mast.

Q. How about their quality? A. The quality has acceptance in the trade, and they do a raft of business.

2675 Q. Waterbury? A. The same history as the American Brass.

Q. Are they as large? A. I don't know, but they are substantial competition in the field.

Q. Trenton Electric Manufacturing Company? A. I don't know.

Q. Francis Keil? A. Francis Keil at that time manufactured flush switches at lower prices. A small concern, but substantial competition on account of low prices.

Q. What happened? A. I think he has gone out of the picture. Either failed or bought out.

Q. Brewer? A. Don't know them.

2676 Q. Marks Products Company? A. Marks Products Company, as far as competition, it is chiefly on attachment plugs.

Q. Connecticut Molded Products? A. Connecticut Molded Products, I think, has gone out of existence, but at that time they were in competition with us on attachment plugs.

Q. Trico Fuse Company? A. Fuse plugs, very cheap ones.

Q. Where are they located? A. I couldn't tell you.

Q. What class of trade do they sell to? A. Jobbers.

Q. Chapin Company? A. Chapin Company was in competition on flush receptacles and convenience outlets.

Q. Small or large? A. Small.

Q. What class of trade? A. Jobbers.

Q. Armstrong & White? A. Armstrong & White, I believe, like the concern we mentioned, the Knox Porcelain Company, were interested primarily in manufacturing porcelain, and through that they have gone into the wiring device business, so far as it uses porcelain, and they have become quite substantial competition in the field, on account of low prices, and their lines have constantly ex- 2678
panded, although they do not get into the brass shell game or the switch game.

Q. How do they compare in size? A. So far as we meet them they are small in capitalization, but do quite a bit of business with jobbers throughout the country.

Q. Best Electric Company? A. At that time they manufactured sockets, brass shell sockets, at very low prices, selling most anywhere they could sell.

Q. Are they still in business? A. I think not.

Q. Where are they located? A. I don't know.

Q. Yaxley? A. Located in Chicago, competing with us chiefly on receptacles manufactured for 2679
radio installation, that is, for radio connections.

Q. I notice one or two that you say the quality compares favorably with yours and the prices were cheaper. What attempt did you make to meet that competition? A. We hang on as long as we can, until we finally have to meet their prices.

Q. Is there an association of these manufacturers? A. Of those manufacturers?

Q. Yes. A. Not to my knowledge.

Q. Is there an association of electrical wiring device manufacturers? A. The only one I know of

is the National Electrical Wiring Manufacturers' Association, which is a trade association; which was called the Associated Manufacturers of Electrical Wiring Supplies, to which anyone is eligible.

Q. You don't know how many of these belong to that Association? Was this compiled from any association? A. No, it was compiled from the Underwriters' list of approved fittings, and on the basis of what information we got from the field from our branch managers, as well as from the classified list of manufacturers.

2681 Q. Out of that group, would you say the following were sold about the same quality and at approximately the same price: General Electric, Bryant, Hubbell, Pass & Seymour, Weber, Connecticut Electric—having sold in practically the same way, distributing it in the same way? A. I have already testified that the Connecticut undersold us on certain products in the switch and socket line, and sold at higher prices on our molded line.

Q. Outside of that correction, is that correct? A. Yes, those named, the quality compares and sold to practically the same class of trade and under the same price conditions.

2682 Q. Circle F., Paulding, Leviton, Monowatt, are the principal manufacturers that sell an inferior quality and sell it at much lower prices, or would you add some to that list? A. It is pretty hard to make a comparison.

Q. I am referring to those who carry a full line of wiring devices. A. I would include Standard.

Q. In that same group? A. Yes. Cutler Hammer belongs in that first group. They sold at practically the same price level that we did. We have included so far as the complete or partial lines go, the biggest competitors who undersold us.

Q. How about the Gaynor Company—all the concerns equal in quality but still selling at a lower price? A. You are not talking about complete lines?

Q. Practically complete lines. A. You have included them in one of the two groups.

Q. How about the Gaynor Company? A. They make plates.

Q. Those two groups are the principal manufacturers, and they fall into those two groups? A. Yes, on fairly complete lines.

Q. Since 1929, at the time this list was prepared 2684
that you have been talking about, what substantial manufacturers of wiring devices have come into the industry? A. Well, I don't know. It takes an investment to come into this business, as far as the complete line is concerned. It may take years and years of effort to make a company which would parallel you 50 or 75 per cent.; you take the molded plates, which is a very big item with us. Practically every molding company in the country realizes that his answer to profit is volume, and in addition to selling the molded parts he will go right in and make electric molded switch plates, and there are quite a lot of them that have come into the picture. 2685
The same with the porcelain manufacturers. They start in a small way and add to their lines.

(Discussion off the record.)

A. (Continued) For example, I have reports here sent in from time to time. Here is the Union Insulating Company, manufacturing weatherproof sockets. Here is another letter showing a sample of a competing switch of the National Manufacturing Company of Boston. Here is the Keystone Manufactur-

ing Company. Here is the Porcelier Manufacturing Company.

Q. Since you received reports of that kind, would you assume that the concerns that made a substantial inroad in the business force competition wherever they appear? A. Which we have met in this connection?

Q. Do you meet it or ignore it? A. We take cognizance, and if the competition becomes substantial we have to meet the prices, or go to a point where we can hold the business.

2687

Mr. Haycraft: So that there will be no further misunderstanding about it, I wish to withdraw the objection that I had along this line of examination and state for the record at this time that I think there is evidence to show an attempt to create a monopoly, and that I shall so urge upon the Commission in argument and brief from cross examination of this witness.

Examiner Reeves: It is almost six o'clock.

(Discussion off the record.)

Mr. Haycraft: I have no further questions to ask this witness.

2688

REDIRECT EXAMINATION BY MR. GROSS:

Q. Whether or not competition from manufacturers in this list, who made only a partial line is keen competition so far as your companies are concerned, and so far as each division is concerned? A. It is very keen competition.

Q. In other words, the fact that a company does not make a complete line does not in any way take them out of the field of being thorns in your flesh? A. Not at all. If there were several companies,

and if each company went after business it is equivalent.

Q. Whether or not the second group of companies who were making a cheaper quality, for instance like the Leviton class, whether they are just as strong competitors of yours as the companies in the first line, the higher class or quality manufacturers? A. They are. In fact, we sit around here trying to decide what to do to meet that competition from the trade, to let the business go or try to meet the various conditions that we find in the field.

2690

By Mr. Haycraft:

Q. When you say keen competition, what do you mean? A. I mean trying to get the business from others.

Q. That is your definition of keen competition, when you lose business to your competitors? A. Yes, sir.

Q. Is that usually by price? A. In certain cases; in certain cases, no.

Q. What other conditions would make keen competition? A. Personality, financial backing, and quality of goods. 2691

Q. Terms? A. Sometimes.

Q. Credit? A. Sometimes.

Q. There are concerns to whom you would not extend credit where others will? A. Yes. We had some during the period of the holding company, when the Arrow Company extended credit where the Hart & Hegeman Company would not, the same as the Baltimore Electric Supply Company, as I recall the situation at that time.

2692 *Harvey C. Pond—Recalled—Redirect.*

Q. Do you have a common credit man now? A. Yes.

Q. How long has that been? A. Since the merger.

Q. Since January, 1929? A. Yes.

Mr. Haycraft: That is all.

By Mr. Gross:

2693 **Q. Whether or not a large concern in the electric business, and not necessarily the electrical wiring device business, is unabled by virtue of having a more complete electrical wiring line,—constitutes them a source of greater competition in dealing with jobbers for a complete electrical line?**

Mr. Haycraft: Objected to as leading.
Mr. Gross: I withdraw the question.

Q. Whether or not there is real competition with concerns manufacturing and marketing electrical lines of which the electrical wiring devices are only a part?

2694 Mr. Haycraft: That is objected to for the same reason.

Examiner Reeves: The objection is overruled.

A. I can't understand—

Mr. Gross: I withdraw the question.

Q. Is the fact that the Cutler Hammer Company, as you testified, manufactures a fair number of electric goods, in addition to electrical wiring devices,

constitutes them for that reason a greater competitor than if they were only making a few electrical wiring devices which you say they make?

Mr. Haycraft: That is objected to for the same reason.

Examiner Reeves: Overruled.

Mr. Haycraft: Exception.

A. If I understand the question, you want to know—

Q. By reason of the fact that they also carry other goods which the jobber would carry, along the lines which you do not manufacture, outside the electrical wiring device industry. 2696

Mr. Haycraft: I object to the form of the question. The answer doesn't need to be suggested to him.

Examiner Reeves: The objection is overruled.

A. If I understand the question correctly, they have a very large line of motor control apparatus which was available to the jobbing industry. They got into the electrical wiring device industry to complete their line, and they brought pressure on jobbers of ours and other competitors to handle their line and throw out our line, and used as a lever for that purpose their large motor control line, with a great deal of success, and they at that time—well, their prices were more or less like ours, and used credit extension methods. 2697

Q. Is that generally true of manufacturers having electrical lines? A. It might or might not be.

2698 *Harvey C. Pond—Recalled—Redirect.*

Q. Whether or not the competition in the trade generally is keener today than it was five years ago?

Mr. Haycraft: That is objected to as calling for a conclusion.

Examiner Reeves: Objection overruled.

Mr. Haycraft: Exception.

A. I should say it is increasing every year this business goes on, because naturally every manu-
2699 facturer is looking for diversification in his products, just as we are. A great part of the product of the ordinary shelf goods items is composed of porcelain, bakelite and molded material, of which there are a great many manufacturers. You make low prices and long terms in order to get the production; all he needs to start in that business, you might say, is an assembly plant.

Q. This list from which you have been reading is not intended to give a full list of all the people in that industry who are competing with you? A. No.

BY MR. HAYCRAFT:

2700 Q. In spite of this keen competition do you refer to your organization as more than holding its own in the industry? A. I wouldn't say that.

Q. Do you not agree with Mr. Cook? A. Mr. Cook is speaking on the appliance angle, and I am for the shelf goods angle.

Q. It was for the entire business, as I understood the testimony.

Mr. Brown: I don't think he so testified.

BY MR. GROSS:

Q. Have you as large a proportion of the industry today as in 1928?

Mr. Haycraft: That is not the question I asked him.

(Mr. Haycraft's question was repeated by the reporter.)

A. I don't know whether Mr. Cook said so.

Mr. Haycraft: My recollection is that Mr. Cook testified that although the Arrow division did not maintain—did not hold its sales on shelf goods as well as the Hart & Hegeman division, yet both divisions had made a better showing than other concerns in the industry so far as decreased sales are concerned. 2702

(Discussion off the record.)

BY MR. HAYCRAFT:

Q. So far as the Hart & Hegeman organization is concerned, comparing your sales with the sales of your principal competitors, you are in a better position today than in 1927?

2703

Mr. Gross: I object to the question as calling for a conclusion.

Examiner Reeves: The objection will be sustained.

Mr. Haycraft: Exception.

Q. You are acquainted with the volume of sales from year to year of your organization? A. Yes.

Q. Of both divisions? A. Yes.

2704 *Harvey C. Pond—Recalled—Redirect.*

Q. Are you also acquainted with the sales of your principal competitors? A. No.

Q. You are not? A. No.

Q. How did your 1929 sales compare with the year 1927? A. They increased.

Q. And that increase was in the face of this keen competition that we have been discussing? A. That was due primarily to general business conditions, and perhaps also to the fact that the Arrow socket bolstered up the Hart & Hegeman sales, in which they were lamentably weak.

2705 Q. Regardless of the reason, it was accomplished in spite of competition which you described as keen? A. Yes.

Mr. Haycraft: That is all.

BY MR. GROSS:

Q. Did your sales between these two years go up in the proportion that the total sales in the industry in the United States went up? A. They did not. The percentage went down.

BY MR. HAYCRAFT:

2706

Q. Have you figured those percentages? How do you compare them? A. We compared them with the Census report.

(Discussion off the record.)

Examiner Reeves: The hearing will be adjourned to 10 o'clock tomorrow morning.

(Whereupon, at 6:15 P. M., June 18, 1931, the hearing was adjourned until 10 A. M., June 19, 1931, at the same place.)

Harvey C. Pond—Recalled—Direct. 2707

Conference room, Arrow-Hart & Hegeman Electric Company, 103 Hawthorne Street, Hartford, Connecticut.

June 19, 1931.

Met pursuant to adjournment, 10 A. M.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

E. H. HAYCRAFT, Attorney for the Federal 2708
Trade Commission.

CHARLES WELLES GROSS and WALLACE W. BROWN, of Gross, Hyde and Williams, 49 Pearl Street, Hartford, Connecticut, Attorneys for the respondent.

PROCEEDINGS.

HARVEY C. POND, was thereupon recalled as a witness, and having been previously duly sworn, 2709
testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. GROSS:

Q. Proceed, Mr. Pond. A. The total combined sales of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, including export, intrastate sales to competitors and appliance and heater material was, for 1927, $7,953,766., and

2710 for the year 1929, for the new respondent, $8,173,884.

The figures as given for 1927 are adjusted to the audit figures given by Mr. Inch of $8,386,082 by deducting from those audit figures for a thirteenth month in the Hart & Hegeman Manufacturing Company sales, due to a change in their fiscal year. That month's sales amounted to $292,827. There was a further deduction of sales of the Electric Porcelain & Manufacturing Company of non-electrical materials, such as stove handles, amounting to $139,489., making a total deduction of
2711 $432,316.

Q. Then what, Mr. Pond, is the percentage of increase of the business of the new respondent for 1929 above the corresponding business of the two companies for 1927? A. The percentage of increase was three per cent.

Q. What was the corresponding increase in the census figures for the entire electrical wiring device industry, 1929 over 1927? A. 29 per cent.

Q. Referring to your testimony of yesterday, with reference to the question of relative size of some of those concerns on the list of competitors
2712 that you read into the record, of two years ago, from your knowledge of the sales management of this company, who is the largest manufacturer of sockets in the United States? A. The Leviton Manufacturing Company.

Q. Will you state some other instances of concerns which, while not making possibly a complete line make very large sales in comparison with yourself, as I understand it, in the trade on particular types of material? A. Well, as I explained yesterday, the size of the concern hasn't a great deal to do with the amount of competition that they may

offer us. By that I mean a small concern might start out as, for example, the Alcor Manufacturing Company in Chicago, and concentrate on one or two items. They might not be a substantial concern or have heavy financial backing, but concentrating on that one or two items at a price below ours they might very well,—and it is our opinion that they do—do considerably more business with the electric trade on candle sockets than our two companies do combined. That is also true of a concern like the Beaver Company in New Jersey. They concentrate particularly on such items as canopy switches, 2714
and due to that concentration and price advantage they did, without question, on canopy switches, more business than we did, the combined companies did. That is also true of the Standard Manufacturing Company. They also did more business on the canopy switches than the two companies did or both combined divisions did.

What I am trying to convey is that the size of the company does not necessarily have anything to do with the amount of competition.

Take particularly the porcelain companies, like the Knox Porcelain Company, and other porcelain manufacturers of the same character. They, due 2715
to lower prices throughout, do much more business on porcelain devices, such as receptacles, than we do. Each particular specialty house creates a market for that particular specialty which they are manufacturing.

Q. Now, the Standard Company. Is that increasingly active in the competitive field? A. They are. For a number of years they manufactured in competition with us chiefly switches, flush switches and surface switches, and they seem to be content to ride along at a five per cent. differential below

our prices, and they themselves have felt competition from other companies coming into the business. We get reports that jobbers are stocking both Standard sockets and Standard switches at considerably lower prices than we have to offer, and our field reports indicate clearly that the jobber trade, which is more or less the backbone of the business, is fast swinging to the policy of having two lines. In other words, a quality line and a cheap line, and is crowding us out of the jobbing picture, and it is a serious problem to us.

2717 Q. These instances would be illustrative of what you get by way of competition from a great many of these competitors who are featuring and pushing one particular schedule or one particular line of devices? A. That is true. I might say that while they start out as a so-called cheaper manufacturer offering material of perhaps of inferior quality, they constantly improve, and today most any of those brands have a fairly good acceptance with the trade, so that the differential of even five per cent. is enough to simply crowd us out of the picture.

Mr. Gross: You may inquire.

2718 CROSS EXAMINATION BY MR. HAYCRAFT:

Q. These three companies that you named, do they universally distribute all over the United States or are they locally constituted? A. They sell everywhere.

Q. They have salesmen calling on both jobbers and contractors? A. Yes, chiefly through commission agents, and they are all looking for lines. All they have to do is start a manufacturing company. I think they are scattered all over the country, and

they get a commission on what they sell. So they have a sales department right off the bat.

Q. The reports that you say you have, are they in writing or verbal? A. Both. In writing, and when they come in we talk over the competitive conditions.

Q. How long has that been true? These reports, that have come in? A. They have been constantly.

Q. I mean in this particular situation, this type of competition that you have described this morning? A. There is no time limit on that. Competitive conditions change year in and year out and 2720
from month to month, and have right along.

Q. That situation has existed right along? A. It has, but it has got worse and worse all the time.

Q. Do you have in mind any particular district manager who has made written reports? A. No, general reports from practically everywhere. When they come in, or we are in Boston, in Philadelphia or in New York, we naturally talk it over. The rest of them are in writing.

Q. Do you have those reports in your files? A. I presume I could find them.

Q. I would like to have those reports.

Mr. Gross: I submit you do not want to 2721
put these reports into a public official file for discussion by trade competitors.

Mr. Haycraft: I can't see any difference between that and the testimony. That is the best evidence of the conditions that exist.

Mr. Gross: I asked him whether that was the knowledge of the trade.

Mr. Haycraft: He said reports. He said he had reports from the trade.

(Discussion off the record.)

2722 *Harvey C. Pond—Recalled—Cross.*

Mr. Haycraft: I move to strike out the testimony.

Mr. Gross: If your Honor please, the gentleman has reported from his knowledge. It came partly in oral conversations and partly in writing. You cannot verify the basis for his general knowledge of the trade from an occasional written report from a manager, and I submit that those details are confidential, and ought not to be called for by the Commission, and they are not relevant, as they are not the basis
2723 for the obvious fact that this competition, which this man knows of, is increasing in the territory. Those papers won't show it is increasing.

Examiner Reeves: The motion to strike will be denied.

Mr. Gross: I object to the request to produce on the same ground, on the ground that they won't be more than merely a part of the experience of this man, who is general manager. They would be misleading if produced, and they are virtually confidential, which the Federal Trade Commission ought not to spread
2724 before the public.

Examiner Reeves: The objection is sustained.

Mr. Haycraft: Exception.

(Discussion off the record.)

Mr. Haycraft: I haven't any further questions.

Mr. Gross: That is all, Mr. Pond.

HAYNES L. EVEREST, was thereupon called as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. Mr. Everest, at a previous hearing Mr. Pond, on behalf of the Arrow Division was requested to produce, and did produce, certain figures showing volumes of sales to certain common customers indicated, during the period of the 15 months of the old respondent, the change in volume between the two divisions indicating that solicitation of business by 2726
the Arrow reduced the Hart & Hegeman sales. Have you prepared a similar statement showing for that same period cases where it happened the other way, that H. & H. presumably took business which had been going to Arrow? A. I have.

Q. What is the first name on the list? A. Eastern Electric Supply Company.

Q. Taking the years 1927 and 1928, for the comparative figures of the Arrow Division, how much did the Arrow business sold to that company go down in the second year under the first? Have you got a table showing eight customers, illustrative of what we are speaking of? A. I have. 2727

Mr. Gross: I offer it.

Mr. Haycraft: Subject to check, I haven't any objection.

Examiner Reeves: This comparative statement will be received in evidence as Respondent's Exhibit 31.

(The statement was thereupon received in evidence and marked "Respondent's Exhibit No. 31".)

Mr. Gross: You may inquire.

2728 Haynes L. Everest—Recalled—Cross.

CROSS EXAMINATION BY MR. HAYCRAFT:

Q. That first concern that you have listed there, the Eastern Electric Supply Company. What explanation do you have to give for that increase? A. Intensive solicitation of the customer by the H. & H. Division salesman.

Q. Who was he? A. If I remember correctly it was Mr. Gabry.

Q. Who was the salesman for the Arrow Company? A. That I can't answer.

2729 Q. What makes you believe it was because of intensive solicitation of Mr. Gabry? A. Because Mr. Gabry reported to me, and I was in close touch with his activities.

Q. What did he say about it? A. I wouldn't go on record as repeating what a man said in 1927.

Q. Do you recall what inducement he offered to that customer to get the business away from the Arrow people? A. Except the general inducement that he was doing an aggressive job, that he was working for his living, and he had to have the business, and he was creating the demand.

Q. Did he make any price concession? A. No, sir.

2730 Q. Did he offer any better terms? A. Not to my knowledge.

Q. Did he offer and credit inducement? A. No.

Q. His quality was the same? A. Generally speaking.

Q. You are not acquainted with the Arrow salesman who called on that concern at that time? A. I wasn't interested in the Arrow salesman.

Q. You don't know whether he stopped calling or not? A. I have no way of knowing. We were interested only in the building up of the sales of our business.

Q. As a matter of fact, you had been selling that customer right along, substantially. A. I can't go back of 1927. I would assume the sales prior to that had been very slight.

Q. In 1927 they were substantial? A. According to a certain basis, but not according to the volume of business that that company was doing.

Q. Now, the Pittsburgh Electric Manufacturing Company, in Pittsburgh. You have listed that here as the second company. In that case your sales increased about $2,000. and the Arrow sales decreased about $4,000., but the sales of the Arrow Company were about $8,000. more than yours in 1928? A. That is correct. 2732

Q. Do you consider you took that customer away from the Arrow under those circumstances? A. Those figures are not designed with that customer to show that the total business was taken away from the customer, but inroads were being made to take the business.

Q. Isn't it an instance of where your sales increased and theirs decreased? A. It would not.

Q. Because— A. Because a definite effort was made to secure the business.

Q. What kind of business? A. Jobbing business.

Q. Any particular items? A. The entire line. 2733

Q. Who was your salesman on the job? A. Noll. I think he was the man.

Q. And who was the official of the Pittsburgh concern? A. Mr. Brown.

Q. What happened there that you know a definite effort was made to take the business away from the Arrow people? A. In the case of the Pittsburgh territory the situation was one that was very closely under the control of Hartford, in that I was personally watching the Pittsburgh developments,

and I knew the very case in Pittsburgh and in Pittsburgh territory where the salesman was operating, and in good measure directed the salesman's efforts as to where to go and get his business, to the best of my knowledge, I visited Pittsburgh a great many times during that period, and therefore when I say a direct effort was made to get the business, I know it of first-hand personal knowledge.

Q. What was the purpose of taking it away from Arrow? A. Because I was interested in building up the sales of the H. & H. Division.

2735 Q. At the expense of Arrow? A. I would say at the expense of anyone.

Q. But this particular concern was an Arrow concern? A. Yes.

Q. You were particularly interested to do it at the expense of Arrow? A. I considered him a vulnerable customer, and as such we went after the business.

Q. Why did you consider him— A. Just plain common sales sense would tell you that.

Q. Give me an illustration of what you mean by that. A. If you were ever a salesman I think I could explain it to you.

2736 Q. Well, I am a salesman. Go ahead. A. You know that in any line there are certain concerns where the management is more or less perhaps temperamental; they are not what you call the solid, hard, bedrock type. Your job as a salesman is to learn the characteristics and the different qualities of each one of the competitive jobbers with whom you are fighting for business, and when you find a jobber who shows a weakness in any line of approach, that is when you go after him hot and heavy to get his business.

Q. It was your idea, was it, that Mr. Brown was probably willing to give up the Arrow line if you could show him more money on the H. & H.? A. Mr. Brown, to my knowledge, was never approached to give up any line. He was approached on the basis that we were offering merchandise for which we had created and were creating a very definite demand, and our job was to sell the advantages to him, with the ultimate hope that he would push it.

Q. At that time he was pushing the Arrow line? A. To my knowledge.

Q. Did you offer him any inducement in the way of better price? A. I have outlined the inducements. 2738

Q. Those are the only ones? A. Purely one of salesmanship.

Q. You could not offer him better quality? A. I don't know whether the question of quality in this particular case was stressed.

Q. Don't you find as a salesman in this line, as well as any other line, that the element of service and price have pretty much to do with your ability to make a sale? A. You forgot one of the biggest elements, and that is personality.

Q. Personality will go a certain length, but haven't you found that a customer is rather slow to give up a profitable situation for the sake of personality? A. Personality alone, yes, but personality coupled with ability, the ability to sell himself, to sell the plan on which he was working, to build up the business, is a darn hard combination to beat. 2739

Q. At that time was the Arrow doing the same thing that you did in building up its business? At that time I wasn't very much interested in what the Arrow Company were doing.

2740 Q. You knew the Arrow Electric Company was owned by the same people who owned your concern? A. Absolutely.

Q. And you know that every dollar's worth of business that you took away would come out of the profits of that company?

Mr. Gross: I object to that. It is based on a conclusion which is not predicated on the facts.

Examiner Reeves: The objection is overruled.

2741 (The last question was repeated by the reporter.)

A. My answer is this, that my job was purely one of salesmanship, not of finances. I had a job to do, my job was to increase the sales, and I wasn't worrying very much about finances one way or the other.

Q. Did there come a time in the history of your contact with the Pittsburgh Electric Manufacturing Company that your desire to obtain business at the expense of the Arrow line was dissipated somewhat? In other words, are you as anxious to do
2742 that today as you were in 1927? A. I can see absolutely no change whatsoever in the policy. We continue as we were.

Q. As a matter of fact, your salesman takes Arrow orders, doesn't he? A. An H. & H. salesman takes Arrow orders?

Q. Yes. Whether he doesn't take orders for Arrow products? A. If he does so, it is unknown to me.

Q. Would you be surprised if he did? A. Yes, I would, very much so.

Q. Would you be surprised if the Arrow salesman took orders for the Hart & Hegeman line from your customer? A. Absolutely.

Q. Would it be possible for you to ascertain from your records whether that was so or not, to save a trip to Pittsburgh? A. I don't know, because the records are not entered here. As I recall it, the Pittsburgh orders are not entered here at Hartford. They are entered at our branch office at Philadelphia. Now, how those orders are sent in, I haven't any first-hand knowledge of. I do happen to know that just through an accident I saw an order the day before yesterday—two or three days ago—from 2744
the Pittsburgh Electric Company, but it was sent direct to Hartford, and it was sent to the Hart & Hegeman—I think in this case, Manufacturing Company, at Hartford. It is all for H. & H. material. Why any salesman of the H. & H. Division should take an order for the Arrow material, or why an Arrow salesman should take an order for H. & H. material is beyond my understanding, because there would be no sense to it.

Q. You could not determine it? A. I don't think so.

Q. Do you recall when the Hart & Hegeman Manufacturing Company first solicited business of 2745
the Pittsburgh Electric Manufacturing Company? A. I don't know.

Q. Would it be about seven years ago? Would that be about the time? A. I couldn't tell you back that far.

Q. Now, on the Roberts Empire Company, Houston, Texas. In 1927 your sales were approximately $5,000., and the Arrow sales $2,000., whereas in 1928 your sales increased and the Arrow sales decreased. What was the purpose of presenting these

figures, what did they represent? A. They represent that the H. & H. Company got in and took what business the Arrow had.

Q. But it was an H. & H. customer? A. No, I wouldn't say that, just because one concern—because one division earned three thousand and another five thousand, it doesn't belong to any one division.

Q. Well, you know as well as I do that some concerns are recognized as H. & H. distributors because they push it more than another line. That is what I mean, this concern was pushing the H. & H. 2747 line in 1927? A. If I remember correctly, the H. & H. concern went in originally and got the Roberts Empire business. I don't know whether they were handling Bryant or whose line. Texas was handled in 1927 by a direct commission representative, and I did not cover Texas. I don't think in that whole period of time I was in Texas once, but I know that he did take what Arrow business was there.

Q. Do you know why? A. Just the general basis, that he sold them the idea; that they had better handle the H. & H. line.

Q. You don't know whether conditions existed, whether there was some dissatisfaction with the 2748 Arrow—what the element was? A. I believe the element was purely salesmanship. Bob Wakefield sold Mr. Roberts the idea that it was to his advantage to sell the H. & H. line.

Q. What inducements would he offer? A. Simplification of stocks.

Q. Would he say it was the same thing as the Arrow line? A. The reverse condition would be true if the other man was as good a salesman.

Q. Would that one inducement—they are both the same quality and both made in the same fac-

tory? A. I take exception to that. I didn't say that. It was a logical business sequence. If a salesman can sell the jobber the idea that by concentrating on one line he is cutting his investment, his overhead, and giving a better service to his customers, coupled with the fact that the salesman or that representative of the line has created a demand and acceptance for the material, I would say he is doing a good sales job, and that is what salesmanship is. Salesmanship is a great deal more this than it is going out and getting somebody's business through special terms or inducements.

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Q. I don't know there is any question about what salesmanship is. A. You asked me this, how this business was transferred.

Q. And you are answering very satisfactorily. I am not quarreling at all with your testimony, because it is just exactly what I expected, so it is perfectly all right.

The New Jersey Electric Supply Company, of Newark. There are no sales of H. & H. in 1927, but in 1928 there were some sales, almost as much as were being sold by Arrow. Apparently he is endeavoring to split his business about equally with the two concerns. What is the purpose of that particular case? A. It is to show that the H. & H. salesman solicited the New Jersey Electric Supply during the year 1928.

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Q. You don't think he solicited before that time? A. He may have solicited him five or six years, for all I know. We very often have to solicit a jobber for many years before we commence to get a break.

Q. Do you have any personal knowledge as to what the situation was, and how he was able to get some of the business? A. I would say it was simply

2752 *Haynes L. Everest—Recalled—Cross.*

a case again of salesmanship, personally, creating a demand, selling the customer the idea that there is a demand and an advantage to handle that line created by that demand.

Q. You don't have any personal recollection of that situation specifically? A. In that particular case, that transaction and that work,—the direction of that work was handled by Wilson in New York. I only know what was accomplished; not the means.

Q. You don't know, then, whether or not the
2753 Arrow salesman relaxed his efforts, or just what happened? A. I don't know. If I did I would have been guilty of being a wide-awake manager.

Mr. Haycraft: I move to strike the answer out.

Mr. Gross: He might not like it, but it is responsive.

Mr. Haycraft: It is not responsive.

Examiner Reeves: The motion to strike is denied.

Mr. Haycraft: Exception, please.

2754 Q. Do you know who the Arrow salesman was? A. I don't.

Q. Do you know who was in charge at that time? A. I do.

Q. Who was? A. Deacon.

Q. Did you have any conversation with Deacon as to what instructions he had given to salesmen? A. No.

Q. On what do you base your answer, then? On general common sense? A. On business sense.

Q. Then your suggestion was based purely upon your idea of the situation, and not upon any in-

formation you obtained from any sales manager of the Arrow Company at that time? A. My information was based on what I would consider would be the action of any live, energetic sales manager.

Q. That, of course, would not take into consideration any executive policy governing both companies which were owned by the same financial owners? A. I don't see the point here.

Q. I am asking you whether that entered into your answer? A. Absolutely no.

Q. The Tomberg Electric Supply Company, 2756
Wilkes-Barre, Pennsylvania. There the Arrow decreased from $12,591. to $10,037. in 1928, and the Hart & Hegeman increased from $2,440. to $2,633. in 1928. What was the purpose of submitting those figures? A. To show the trend of activity was not until 1928, that this company, if I recall correctly, was intensively cultivated by the H. & H. salesman, and the subsequent figures were put in to substantiate the fact that this cultivation and intensive work undertaken in the year 1928 began to show—was beginning to show very materially by 1929, when a big drop in one division was noted and a big increase was noted in the other. 2757

Q. Do you have any independent recollection of that situation there so as to explain the change? A. I recall that the matter was talked over between myself and the district manager, and at that time he made up his mind to make a determined effort to get that business.

Q. And at the time you knew the bulk of the business was going to the Arrow Company? A. As far as I know.

Q. Can you explain, or was any explanation given you by your superior why you were to make a spe-

cial drive on Arrow customers in 1928? A. I had no instructions to make any drive on any type of customers in 1928.

Q. How does it happen in the testimony on all these companies that 1928 was the first time that you determined to solicit them? A. I have just pointed out two or three individuals. If I had started from New York and got to San Francisco and enumerated the number of jobbers on whom we were concentrating or trying to concentrate it would be a long list. Another thing, it is very
2759 difficult to pick any jobber and definitely state that activity to secure that jobber's business started at a certain definite period.

Q. I understand that, and that is the reason why I am asking you to explain that. A. These concerns are only the ones that I know definitely that such activities were undertaken, and the results are borne out by the actual showing in figures. There were a great many other concerns in the country that were handling Arrow products that we were definitely and aggressively going after in 1927 and 1928, but to reduce those accounts to the point where they would show definite figures or
2760 figures showing a marked change in business would be a little difficult to secure.

Q. I understand that, Mr. Everest, but in the case of this one and the others you testified to, you say you have made no effort prior to 1928, no special effort, to get that business. Now, I ask you why it was that you made this special effort? A. I don't recall putting in the record the statement that we made no effort prior to 1928.

Q. No special effort? A. No special effort. I made the statement that in 1928 this thing that

happened to come up in the case of one or two customers.

Q. Are you attempting strenuously today to secure the balance of the Arrow business as you were in 1927, 1928 and 1929? A. I would state definitely that the policy with regard to none of these concerns we discussed has changed absolutely in any way.

Q. The Carolina Electric Supply Company, in Spartanburg, South Carolina. I notice there that the Arrow sales in 1927 were $1,754., and in 1928 $520., whereas the H. & H. in 1927 was $59, and 2762
in 1928 it was $753. What was the purpose of selecting that? A. The reason for putting that in is to show that in 1927 the Arrow Electric Company put an embargo on the Carolina Electric Supply Company and did not solicit or care to get any more business, from a credit standpoint. The H. & H. credit organization—I got in direct correspondence with Mr. Long of the company—and they went on record as feeling sure that the company was good, and we actively solicited his business.

Q. At that time the two concerns had two credit organizations? A. Yes.

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Q. At the present time that would not happen? A. That would be a hard question for me to answer.

Q. You have a common credit department? A. Yes.

Q. The Electric Corporation of Los Angeles? What was the purpose of submitting the sales figures with reference to that concern? A. A very definite drive was made by the Pacific Coast representative to secure the business of that corpora-

2764 *Haynes L. Everest—Recalled—Cross.*

tion, and that they were successful in this is, I think, clearly borne out by the figures.

Q. Do you know how strenuously the salesman of the Arrow people tried to keep the business? A. Knowing the calibre of the organization and the Arrow representative, I would say that they fought like—

Q. Do you know why a special drive was made on that concern in 1928? A. No other reason than it looked like a good prospect to the H. & H. sales organization, and they hopped to it with all their
2765 force, and I do know that the business was bitterly fought for.

Q. The Southern Equipment Company at San Antonio, Texas. Was that Hart & Hegeman in 1927 and pushing Hart & Hegeman products? A. I can't tell you exactly what the status of the Southern Equipment Company was in 1927, or whether the total volume of business as shown there represents the total purchases. I do know that the same conditions surround the Southern Equipment Company as hold true with the Roberts Empire Company at Houston. There was a determined effort on the part of Wakefield to increase his business, spurred on by the fact that I was driving him hard
2766 to increase his business.

Q. In both of these Texas concerns now, I believe from the testimony of Mr. Saladine yesterday, are under combination salesmen, at the present time? A. As far as that is concerned, I get into there very little. Mr. Saladine handles these particular sales conditions that you refer to, but I would say to the best of my knowledge that is exactly what has happened there.

Q. What is the situation in Spartanburg, South Carolina? Did both divisions have salesmen calling

on customers there? A. I don't know. There isn't enough down there to pay for one.

Mr. Haycraft: That is all.

REDIRECT EXAMINATION BY MR. GROSS:

Q. These tables which you have prepared and submitted, as to an increase of business of Hart & Hegeman, and showing a decrease of Arrow business, could be duplicated as to showing your efforts as against Pass & Seymour or Hubbell or other 2768 competitors throughout the country? A. They could.

Q. In other words, I don't know but that my learned friend thought that you would make a particular drive against Arrow, but the same drive would be against any other competitors throughout the country? A. Against any manufacturer.

RECROSS EXAMINATION BY MR. HAYCRAFT:

Q. Would you say that your salesmen would not offer any more inducement to the customers in attempting to get business away from Pass & Sey- 2769 mour or General Electric or Bryant or Hubbell or other concerns, that you just referred to in your testimony with respect to Arrow? A. That is a pretty long-winded question.

(The last question was repeated.)

A. I am afraid that from what I have heard that I am a little old-fashioned in my sales ideas. I wasn't brought up to the fact that salesmanship or the solicitation of business depended upon going to a

customer and offering him some monetary inducement that he wasn't already getting. We train our salesmen along the line that they have the best product, and for years concentrated on the fact of developing in the minds of the trade, the consumer trade, a demand for those products.

Q. Your salesmen in soliciting business from a recognized Arrow jobber or concern that is handling Arrow goods preponderantly would not tell the customer that the Hart & Hegeman quality was any better than the Arrow quality? A. It is con-
2771 sidered very unethical in soliciting business to say that your goods are better than some make of another company. That has been frowned on by the United States, by, I believe, Mr. Hoover, and we consider that unethical in sales.

Q. Would you tell him that the Hart & Hegeman line was obtaining better support in the manner of getting business from electrical contractors than the Arrow line? A. Again you bring in the question of comparing our sales activities with any one line. We always stress to our salesmen the fact that they must sell on the merits of the goods, and not pull anybody else's goods down or pull any
2772 other concern into the argument. I sold goods for 14 years, and I never carried a competitor's sample to show how much better our stuff was, or to refer to a competitor, implying in any way that he might not be or his goods might not be; simply that through my own ability I could sell the idea that our goods were better. I wasn't interested in anybody else's goods.

Q. They had to be better than someone's goods in order to convince? A. Better than the field.

Q. Of course you knew what the particular customer was handling? A. So did he.

Q. So there was no question between you and the customer as to what was in your mind when you approached him. If I am correct in understanding your testimony—if I am wrong, I want you to correct me—it is your contention that the competition between your concern, that is, the Hart & Hegeman Company, and now the Hart & Hegeman Division, and the Arrow is as strenuous and as keen and as strong today, and has been for the past four or five years as it was before October, 1927, is that correct? A. As far as I have any knowledge, that contention is absolutely true.

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Q. And in making that statement you took into consideration that since October, 1927, the same people own and control both concerns and that both divisions are operated by one concern; the goods are exactly the same; you have a common sales manager, common sales division managers and, in some instances, combination salesmen?

Mr. Gross: I object to the last inference, the "in some instances".

(Discussion off the record.)

Examiner Reeves: Does counsel for the Commission desire to modify his question?

Mr. Haycraft: No, sir.

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Mr. Gross: I object to it as not borne out by the testimony.

(Discussion off the record.)

Examiner Reeves: The objection is overruled.

(The last question was repeated.)

Examiner Reeves: The question is, were all those elements taken into account in your previous answers?

The Witness: They most certainly were.

Mr. Haycraft: That is all.

Mr. Gross: That is all.

2776 *Thomas A. Inch—Recalled—Cross.*

THOMAS A. INCH, was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

CROSS-EXAMINATION (Con't.) BY MR. HAYCRAFT:

Q. I believe yesterday, Mr. Inch, I asked you to secure for me the basis of the transactions between the Arrow Electric Company and the Hart & Hegeman Manufacturing Company whereby the former were making sockets and plugs and receptacles during 1926 and 1927 which you took into account when
2777 figuring the saving that was realized by the Hart & Hegeman concern as a result of having these products manufactured by the Arrow in succeeding years, 1928 and 1929. Have you done so? A. Yes, I have. I find in the year 1925, 1926, 1927, that the Paiste Company billed the Hart & Hegeman Company at the regular selling prices less five per cent., but when the Arrow Electric Company took over the manufacture of the Paiste line they billed the Hart & Hegeman line at regular selling prices less six per cent.

Q. The Arrow people were not allowed as large a profit as the Paiste concern? A. One per cent.
2778 less.

Q. Were the market conditions about the same during those three years? In other words, was the selling price of the commodities running about the same? A. I can't answer that question. There possibly may have been a reduction in selling prices during that year, but I don't know that.

Q. I think it was a rising market all the time until I think 1927 or 1928. A. I assume the market condition brought the prices down.

Q. Then, the other matter was the division of your figures in 1925, 1926, 1927 and 1928, with

respect to the manufacturing profit and net profit of the Arrow and Hart & Hegeman concerns, and later the two divisions, which you gave yesterday—the combined figures which you gave yesterday. Do you have that? A. Yes. I have the figures for the years 1925 to 1929, inclusive, now separated as between the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, and the respective divisions for that period.

1925, Arrow Electric sales, $4,392,000. The manufacturing cost of the goods sold, $2,750,000. The manufacturing profit, $1,642,000., or 37 per cent. of the net sales. 2780

The Hart & Hegeman Manufacturing Company, for the year 1925: Net sales $4,242,000; manufacturing cost of goods sold, $2,973,000, leaving a manufacturing profit of $1,269,000., or 30 per cent. of the net sales.

The year 1926, Arrow Electric Company, net sales $4,012,000 manufacturing cost of goods sold $2,443,000, leaving a manufacturing profit of $1,569,000., or 39 per cent. of net sales.

1926, Hart & Hegeman Manufacturing Company, net sales $4,153,000, manufacturing cost $3,036,000, leaving a manufacturing profit of $1,117,000, or 27 per cent. of net sales. 2781

In 1927, Arrow Electric Company, net sales $3,849,000; manufacturing cost of goods sold, $2,498,000, leaving a manufacturing profit of $1,351,000., or 35 per cent. of net sales.

Hart & Hegeman Manufacturing Company, for the year 1927, net sales, $4,537,000.; manufacturing cost of goods sold $3,211,000., leaving a manufacturing profit of $1,326,000., or 29 per cent. of net sales.

2782 *Thomas A. Inch—Recalled—Cross.*

In the year 1928, Arrow Electric Company, net sales, $3,537,000.; manufacturing cost of goods sold $2,336,000.; leaving a manufacturing profit of $1,201,000., or 34 per cent of net sales.

Hart & Hegeman Manufacturing Company, net sales, $4,478,000.; manufacturing cost of goods sold $2,883,000., leaving a manufacturing profit of $1,495,000., or 34 per cent. of net sales.

Year 1929, Arrow Electric Division, net sales, $3,584,000., manufacturing cost of goods sold, $2,306,000., leaving a manufacturing profit of $1,278,000., or 36 per cent. of net sales.

2783

Hart & Hegeman Division, year 1929, net sales, $4,599,000.; manufacturing cost of goods sold $3,012,000., leaving a manufacturing profit of $1,587,000., or 35 per cent. of net sales.

Of course, your manufacturing profit is before deductions for selling expense, administrative expense, taxes, both Federal and State, income from investments, and certain other non-operating items are made.

Q. Do you have the net profit for these years? A. 1925, net profit, Arrow Electric Company, $753,000 or 17 per cent. of net sales.

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Hart & Hegeman Manufacturing Company, $549,000 or 13 per cent. of net sales.

1926, Arrow Electric Company, $690,000 or 17 per cent. of net sales.

Hart & Hegeman Manufacturing Company, $395,000, or 9 per cent. of net sales.

In 1927, the Arrow Electric Company, $500,000., or 13 per cent. of net sales.

Hart & Hegeman Manufacturing Company, $370,000., or 8 per cent. of net sales.

Year 1928, Arrow Electric Company, $600,000., or 13 per cent. of net sales.

Hart & Hegeman Manufacturing Company, $639,000., or 14 per cent. of net sales.

In 1929, Arrow Electric Company Division, $585,000., or 12 per cent. of net sales.

Hart & Hegeman Division, $768,000., or 18 per cent. of net sales.

Q. Do you have any record there which would enable you to answer or explain the drop in net profits in 1927 of both concerns? I think I asked you that question yesterday? A. I haven't got around to that, but I can investigate it for you. I imagine there were some large expenses of the holding company, and there were probably some inventory items, getting rid of material. 2786

Mr. Haycraft: That will be all.

Mr. Gross: That is all.

GEORGE S. STEVENSON was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS: 2787

Q. Where do you live? A. 65 Forest Street, Hartford.

Q. And what is your business? A. I am the senior partner in the investment firm of Stevenson, Gregory & Company. We are members of the New York Stock Exchange.

Q. And the firm is located in Hartford? A. Yes.

Q. With branch office in— A. In New Haven.

Q. Where did you serve your apprenticeship as a financial and investment broker? A. I entered the

2788 investment field as a salesman for Lee, Higginson & Company, in the Boston office. I was sent by them to Hartford to manage that business in Connecticut in 1915. I remained as Connecticut manager for them until the early part of 1921, when I was elected treasurer of the Society for Savings, a mutual savings bank in Hartford, which, incidentally, is the largest mutual savings bank in New England outside of Boston, having resources of over $70,000,000.

Q. The treasurer of the Mutual Savings Bank—

2789 A. He is the executive officer. I resigned from the Society for Savings in April, 1927, to become one of the senior partners of the firm Thomson, Fenn & Company, located in Hartford.

Q. The firm of Stevenson, Gregory & Company is the same firm under a new name? A. Mr. Thomson retired in 1928 and the firm now is the successor firm, and I am now the senior partner.

Q. Are you a director of the Hartford Fire Insurance Company? A. Yes.

Q. Of the Hartford Accident and Indemnity Company? A. Yes.

Q. Of the Phenix Mutual Life Insurance Company? A. Yes.

2790 Q. Of the Hartford National Bank and Trust Company? A. Yes.

Q. Of the First National Bank of Boston? A. Yes. Also of the old Colony Trust Company in Boston.

Q. Are you a member of the New England Governors' Railroad Committee, being one of the Connecticut representatives? A. Yes.

Q. Which committee is the committee studying the question of unification of ownership of all the New England railroads? A. Yes. I have some other directorates, if you want—

Q. I would like to qualify you as— A. I am a director of the Bankers Trust Company of Hartford. I am a trustee of the Society for Savings in Hartford. I am trustee of Smith College, and chairman of the Investment Committee of the Trustees of Smith College, and I am a director in this company, the Arrow-Hart & Hegeman Electric Company. I guess there are some others, but I can't remember them now.

Q. In 1927 did you become familiar with the fact of the death of Shiras Morris, the president of the Hart & Hegeman Manufacturing Company? A. I remember that one of the first subjects that came up for discussion in our regular partners' meetings in the firm of Thomson, Fenn & Company, was the question of what could be done with the Hart & Hegeman Manufacturing Company, Mr. Shiras Morris having died in February, before I became a partner in the firm. It seemed to all of us desirable, of us in the firm, to find a way, if we could, to do the financing, which became necessary, since Mr. Shiras Morris himself was a very large stockholder in Hart & Hegeman, and his estate was therefore under the necessity of a liquidation of some of that stock, if not for tax purposes, then for diversification purposes, and since he had established, as we understood, one or two trusts containing that stock for his children—we discussed the matter a good deal. Particularly, of course, we hoped that out of it would come the kind of business upon which we make a living, the buying and selling of securities; but we finally made up our minds that we did not dare enter it with the idea of creating a security that could be sold to the public, because Mr. Morris had been almost everything in the company, in the manufacturing and selling way.

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2794 *George S. Stevenson—Direct.*

Mr. Samuel Williams was a strong man, but his specialty was on the financial side. We finally gave up hope of being able to perform the financial service there safely.

Q. Then when did the question come to your attention again, the next time? A. The next thing that happened having a bearing upon the present subject was that early in June Mr. Edward R. Grier came into my office and said that he was contemplating the issuing of preferred stock of the Arrow Electric Company, and stated that he and
2795 his associates, who owned all the stocks, had worked hard for more than twenty years—I think it was established in 1905—and had put the money back into the company, and now the time had come, as they were getting older, when they wished to diversify their investment, and he and his associates were planning to issue to the public preferred stock, the proceeds of which, according to the common stockholders, could be used for a diversified list of outside investments. I at once became interested, because I knew of the success of the company. We had several conversations, and finally it developed into this plan of issuing $2,000,000 6½ per cent.
2796 preferred stock, that stock to be issued to the common stockholders and the common stockholders to sell it to us at a certain price, and we would sell it to the public at an advanced price. Mr. Grier had had a pleasant relationship with the Bankers Trust Company of New York, and it seemed to him and to us desirable that we bring the Bankers Trust Company into the situation in order to take advantage of their experience and capacity, and terms of the issue were set up by the Bankers Trust Company and ourselves in collaboration. The Bankers Trust Company did not participate in the re-

tailing, because of the policy of not selling preferred stock. We formed a syndicate, consisting of Connecticut houses, Thomson, Fenn & Company managing it. The other members were Putnam & Company of Hartford, Charles W. Scranton Company, of New Haven, Edwards, Marrill & Company, of Hartford, Roy T. H. Barnes, of Hartford, and R. T. Griggs Company, of Waterbury, constituting some of the leading firms in Connecticut.

Q. Most of them members of the New York Stock Exchange? A. The following are members of the New York Stock Exchange: Thomson, Fenn & Company, Putnam & Company, Marrill & Company, Charles W. Scranton & Company. 2798

The issue of preferred stock was a complete success, it having been sold by two o'clock on the day of issue.

That was June 28, 1927, payment to be made in the early part of July. During the negotiations with Mr. Grier, I had brought up the question whether it would be possible for him to take the Hart & Hegeman situation under his care, so that it might be handled for the sake of the situation in Hartford. He at the time I spoke of it was not interested. After the sale of the preferred stock I went to my summer place in Maine, but came back on the day when the transaction of the $2,000,000 issue was to be cleared. I told Mr. Grier—I called him on the telephone and said I was back, and I went out to see him to make sure that everything was in order. That day he brought up the question which I had brought up to him, of the possibility of caring for the Hart & Hegeman situation. We had a long talk about it that day and on succeeding days. I became very much interested and put my time on to that question. After a series of con- 2799

2800 ferences we worked out a plan whereby it would be proposed to the stockholders of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company that the companies be affiliated. The proportion initially worked out was for the capitalization to be in the ratio of 60 Arrow and 40 Hart and Hegeman. That made necessary a recapitalization of Hart & Hegeman. The plan was ultimately presented to the stockholders of both companies, and approval was given unanimously for the plan.

2801 Involved in the plan was the purchase from the widow of Shiras Morris of as large a part of the late Mr. Morris' holding as she wished to dispose of. She was in Maine, and I made a trip to see her and offered her a certain price for her holdings or any part of them which she wished to dispose of, and I suggested that she take sufficient time to think it over and to talk it over with her adviser. My offer was subject, of course, to market changes which would make impossible the marketing of the securities.

She returned from Maine later in the summer, and after various conferences she agreed to sell to us the larger part of her holdings, and the stock 2802 she would sell to us would be the stock resulting from the capitalization of the company. The common stock was readjusted to make a par value of $500,000, and the old preferred stock outstanding was to be retired and a new issue of 6½ per cent. preferred stock was to be sold to the public to the amount of $1,333,000, giving Hart & Hegeman an outstanding preferred stock in the ratio of 40 to the 60 outstanding preferred stock of Arrow.

The plan, as Mr. Grier and I and our adviser talked it over, was that the common stocks of the

two companies should be put into a holding company. Mr. Grier's reasons for that, which I came to agree with after he had set them forth, were that he wished to preserve the proprietary value of the separate trademarks, t' Arrow and Hart & Hegeman. He thought there was a great value which should be maintained, and I came to agree with him. I should say that when Mrs. Morris came back from Maine some time in August, when we had our conferences, we had an unfortunate episode with Dillon, Read & Company. A Mr. Goldthwaite, representing Dillon, Read & Company, 2804
came to Hartford just about as we were to close our negotiations with Mrs. Morris and with the Trust Company which held the late Mr. Morris' trusts. He had the plan of putting the Hart & Hegeman and Arrow with two or three other and larger companies. That appealed to few of us, and after some acrimonious discussions, in which Goldthwaite offered a very much higher price than we were offering, and the price which we offered we figured was the top price, as much as it possibly could be worth, Mrs. Morris and her advisers decided not to accede to the Dillon, Read plan. But while the discussions lasted they were quite uncom- 2805
fortable.

Q. What were the objections to the Goldthwaite plan?

Mr. Haycraft: That is objected to as not within the issues of this case. That is a matter of business transaction that took place in this witness' office. I can't see where that would have anything to do with the issues involved in this proceeding.

2806 *George S. Stevenson—Direct.*

Mr. Gross: My thought was, if your Honor please, with the history of these negotiations I wanted to bring out why this plan was better than the other plan, and therefore what the conditions were which, in the opinion of Mr. Stevenson, and Mrs. Morris, led them to feel that it was best for the Morris interests to accept that plan.

Examiner Reeves: The objection is overruled.

Mr. Haycraft: Exception.

2807 A. Mrs. Morris and her advisers agreed with the point of view which we stressed in our conferences, that here was a Hartford industry, upon which many Hartford people were dependent upon for a livelihood, and which has been well-known in the past, and there was a good future for it through its affiliation with the Arrow Electric management, and for the sake of all of us in Hartford it was not fair to sell out to an absentee management. Many of Mrs. Morris' advisers were able men who took that broad-minded point of view, for the sake of the community, but it was only on the basis of the Hart
2808 & Hegeman finding the management which it needed with the Arrow Electric management. The plans went through. The million and a third Hart & Hegeman preferred stock was underwritten by our house and enjoyed an immediate sale by the same group, by the same banking group as had handled the preferred stock of the Arrow Electric Company. We took up Mrs. Morris' stock, which amounted to just under 40,000 shares.

Q. Speaking of the— A. Speaking of the new stock.

Q. Of which company? A. Of the new company, the holding company. Let me say it in another way. The holding company was created to take to itself all the common stock of both the Arrow Electric Company and the Hart & Hegeman Manufacturing Company. There resulted from the readjustment 200,000 shares of stock of Arrow-Hart & Hegeman, Incorporated, of the holding company. Of the 200,000 shares, Mrs. Morris' part was just under 40,000 shares, and in accordance with our agreement we bought that from her and paid for it with the exception of 8,000 shares, which at Mrs. 2810
Morris' request were allocated for subscription at the price which Mrs. Morris received, to the employees.

Q. Of Hart & Hegeman? A. Of Hart & Hegeman. That was in deference to the memory of Mr. Morris, to whom the employees had been loyal. That left us with just under 32,000 shares of stock of the holding company, which were put on the market one morning and which were sold throughout Connecticut by the same syndicate as handled the two issues of preferred stock, but with the addition of the firm of Fuller, Richter, Aldrich & Company, of Hartford. As I remember, that stock was sold 2811
by the middle of the forenoon. All three of those issues were sold very broadly, mostly to people of Connecticut, in very small amounts.

Now, that is an account of our connection with the refinancing of the Arrow Electric Company, the Hart & Hegeman Manufacturing Company and the holding company.

Q. Was the common stock of the holding company when organized and its stock distributed through your syndicate listed on the Hartford Stock

Exchange? A. Yes, all issues were listed on the Hartford Stock Exchange.

Q. And actively traded in? A. Yes, and there has ever since been an active market in them.

Q. Since the dissolution of the old holding company and the consolidation of the operating companies, on January 1, 1929, has the common stock and the preferred stock of Arrow-Hart & Hegeman Electric Company been widely held? A. Very widely held? A. Very widely held, with a very active market.

2813 Q. The preferred stocks of the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, to which you refer, as distributed through your firm, were they also widely distributed to the public? A. Very widely distributed, mostly many small investments.

Q. Were they actively traded in? A. Yes. It would be very rare that there would be a sale of 100 shares. Mostly 10 shares, 20, or 25.

Q. And it was so held and traded in until the exchange of that preferred stock by the public for the preferred stock of the new consolidated corporation? A. Yes, and the preferred stock, as well as

2814 the common stock of the new consolidated corporation, was widely held. The market is less active now because people who own them are indisposed to let them go. We have buying orders more than we are able to fill.

CROSS-EXAMINATION BY MR. HAYCRAFT:

Q. Were you acquainted with Shiras Morris during his life? A. Yes.

Q. Did he ever discuss with you the matter of affiliating his organization with any company? A.

Never with me. I wasn't close enough to him to justify that. He was a good friend of Thomson, Fenn & Company, but I did not enter that firm until after Morris' death.

Q. He wouldn't logically or naturally discuss such matters with you prior to his death? A. No, there would never have been occasion for it.

Q. How did the matter come up for discussion in the office of Thomson, Fenn & Company? A. James R. Thomson had a brother, Douglas H. Thomson, who had been killed in an automobile accident the fall before. Mr. Douglas Thomson and 2816
Shiras Morris were close friends. Mr. James R. Thomson, therefore, on account of his brother's friendship for Shiras Morris, had a good deal of interest in the Hart & Hegeman Company,—sentimental interest isn't the word—I mean a friendship for the affairs of the company. Shiras Morris was one of our strong men here, and the strong men get around, and after his death it was on the mind of all his friends how this thing could be kept going in the masterful way in which he kept it going.

Q. Were you acquainted with Mr. Williams? A. A. Yes, I have been.

Q. He became president of the company? A. Yes, 2817
he did.

Q. Did you keep in touch at all with the financial affairs of the company from February, 1927, down until October, 1927? A. No, I did not join my present firm until April.

Q. Well, from April, then? A. In so far as I could. Of course we were interested in everything pertaining to it. We gave up hope of being able to handle it. The thing which we must ask first, when we do a piece of financing, is, what is the manage-

ment going to be? We stand no chance of working out the management problem.

Q. Did you have any confidence in Mr. Williams? A. Mr. Williams is respected by everyone he has come in contact with, and has had the reputation of being qualified to do his job, but his job was never management. He was a financial man.

Q. Wasn't he the sales manager? A. I don't know that.

Q. As a matter of fact he continued to manage the company for years after? A. Yes, he did.

2819 Q. And had associated with him Mr. Guett and Mr. Cook? A. Yes, good men. That is a question of business judgment, and we in our firm wanted to exercise the best business judgment.

Q. No proposal had been actually put to you; no stock issue had been suggested? A. Except that we knew that the stock was for sale.

Q. That some adjustment would have to be made? A. Yes. We had to buy the stock, and we did not want it for our own company. We bought and sold to the public, and in order to do that we have to have a picture which the public will accept. I would have been willing to buy that whole company

2820 if I had the money to spare, but when you are saying to the public and to your friends, "Buy this," you have to have a pretty sound picture.

Mr. Haycraft: That is all.

Mr. Gross: That is all.

2821

SAMUEL P. WILLIAMS, was thereupon recalled as a witness, and having been previously duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSS:

Q. I show you, Mr. Williams, the record book labeled, "Minutes of Arrow-Hart & Hegeman, Incorporated", and ask you to identify that book. A. This is the complete corporate record of Arrow-Hart & Hegeman, Incorporated.

2822

Mr. Gross: I offer that, Mr. Examiner, under the same arrangement as in the other case, that I will have it introduced and then substitute a complete transcript of the books.

Examiner Reeves: This book will be received in evidence as Respondent's Exhibit No. 32, with leave granted to withdraw the book and substitute in lieu thereof a transcript of its contents.

(The book referred to was thereupon marked "Respondent's Exhibit No. 32 for identification".)

2823

Q. I show you, Mr. Williams, a folder labeled, "Complete copy of the record book of Arrow-Hart & Hegeman, Incorporated," and ask you what that contains? A. This contains a complete set of the minutes of Arrow-Hart & Hegeman, Incorporated, taken from the record book which I just identified. It has been read back and found complete.

Q. And does this copy also contain every other document which is a part of the minutes? A. It does.

2824 *Samuel P. Williams—Direct.*

Mr. Gross: That may be marked, if your Honor please, as the substituted copy.

Examiner Reeves: This document, identified by the witness, will be received in evidence as Respondent's Exhibit 32, and will be received in lieu of the original record book identified by the witness, which is withdrawn.

(The document was thereupon received in evidence and marked "Respondent's Exhibit No. 32".)

2825 Q. Were you one of the incorporators of the company, the old respondent? A. I was.

Q. Were you present at all the meetings of the corporation? A. Yes, sir, I was present.

Q. Who was secretary of the corporation? A. Benjamin C. Perkins.

Q. And Mr. Perkins died here early in May of this year? A. Just before we started these hearings.

Q. Or late in April? A. Yes, but I can't tell you the exact date.

Q. I mean, as a part of your duties, the functions which you performed, has it always been your province to supervise the preparation and examination
2826 of all records in the nature of corporate records of the companies with which you were connected? A. Yes.

Q. Were you familiar with the minutes of this company and the proceedings recorded therein as Mr. Benjamin C. Perkins was? A. Oh, yes, I was quite as familiar with it as he.

Q. Were you a director of the company? A. Yes.

Q. And an officer of the company? A. Yes.

Q. Does that record book, Exhibit 32, contain a record of every corporate act of the old respondent? A. It does.

2827

Q. The old respondent, whose acts are recorded in this book, was not engaged in business? A. No, they transacted no business and paid no salaries. Q. It was a financial transaction of receiving and distributing dividends? A. Yes.

Q. Dividends on the common stock of the two operating companies which it in turn disbursed to its stockholders? A. That is right.

Q. Whether or not its only other function was that the financiers on the board gave of their financial knowledge in an advisory capacity to the two operating companies for investment of their surplus? A. That is true.

2828

Q. Does the book contain a record of every agreement of every obligation undertaken by it in a corporate capacity? A. Yes, sir, it does.

Q. I call your attention to the meeting of the board of directors of the old respondent of November 10, 1928:

"The president stated that the meeting was called to consider and take action upon the termination of the corporate existence of the company, the distribution of its assets to its stockholders in kind and the calling of a special meeting of its stockholders to confirm such action."

2829

Will you kindly refresh your recollection as to the next vote:

"Voted: That if the stockholders by their action confirm the above vote, distribution of the assets of this corporation, being common stock of the Arrow Electric Company and of the Hart & Hegeman Manufacturing Company, shall be made to the stockholders in kind."

After the passage of that vote, did any question arise as to the question of it being a taxable transaction under the Income Tax law? A. Yes, very

2830 soon after it was called in question, and it was decided that it should be investigated.

Q. And whose opinion was sought upon that Income Tax question? A. The matter was referred to Colonel Robert M. Montgomery of Lybrand, Ross Brothers & Montgomery, who was an eminent tax expert.

Q. I show you a letter signed by R. H. Montgomery, and addressed to Mr. Grier, as president of this old respondent, and ask you if that is the opinion which he gave you in response to that in-
2831 quiry? A. Yes, this is the original letter from Mr. Montgomery to Mr. Grier, dated November 22, 1928, in which, on the first page, he has mentioned the plan as originally considered or contemplated. Then, further on, namely, on the fourth page, he suggests a method for the combining of the operating companies which would not render the matter taxable.

Q. Is that suggestion which he made on the fourth page of the letter, in its essence, the revised plan recommended by the board on November 30, 1928? A. Yes, it is practically the exact plan.

Q. Did the suggestion of that plan come to the
2832 old respondent from Colonel Montgomery? It did, by means of this letter.

Mr. Gross: I offer the letter, if your Honor please.

Mr. Haycraft: As I understand the testimony, there was a change in the plan resulting from the advice contained in this letter as to the formation of the two new holding companies, to hold the stock of the two operating companies, respectively, is that correct? Was that the change that was made in the plan of reorganization?

The Witness: Yes, if you call them holding companies.

Mr. Haycraft: Well, I call them that for lack of a better term. They did not operate; they merely held the stock?

(Discussion off the record.)

Mr. Haycraft: I have no objection.

Mr. Gross: I offer a copy.

Examiner Reeves: This letter will be received in evidence as Respondent's Exhibit 33, with leave granted to withdraw the original and substitute a copy thereof.

(The letter was thereupon received in evidence and marked "Respondent's Exhibit No. 33.") 2834

By Mr. Gross:

Q. Before that meeting of November 10, 1928, do you know whether the actual consolidation of Arrow Electric Company and Hart & Hegeman Manufacturing Company had been submitted to the Department of Justice of the United States for its consideration and approval?

Mr. Haycraft: That is objected to as being incompetent, irrevelant and immaterial to the issues in this case. 2835

Mr. Gross: I claim it for this reason: I claim it as showing absolutely that this company throughout had no intention of violating the law, and it appears in the minutes of November 10, 1928, that the president of this company and counsel conferred with the chief counsel of the Federal Trade Commission as to what could be done to satisfy the Federal

2836 *Samuel P. Williams—Direct.*

Trade Commission, and I also claim the right to show that we submitted the matter to the Department of Justice in whom we knew the questions of violations of the Sherman Act respond under the law, and I therefore think that showing the animus or intent of this respondent is a very material feature for the Federal Trade Commission.

Examiner Reeves: The objection will be overruled.

(The last question was repeated by the re-
2837 porter.)

Mr. Haycraft: Exception.

A. Yes, it had. Having realized that we should take steps to meet the criticism of the Federal Trade Commission, we did inquire at the Department of Justice.

Q. Do you know whether a letter was received in reply to that inquiry to the Department of Justice, and if so, whether this is the reply (handing paper to witness)? A. Yes, there was such a letter, and this letter is the reply, under date of October 16, 1928, from William J. Donovan, Assistant to
2838 the Attorney General, stating the attitude of the Department with respect to the merger of the operating companies.

Mr. Gross: I offer that letter.

Mr. Haycraft: I certainly object to this letter without the letter that went to the Attorney General.

Mr. Gross: If your Honor please, the whole paper is submitted for the purpose of showing the intent or the state of mind of respondent, and it is not intended to do more than what

appears on the face. I am not foreclosing the Department of Justice; I am simply indicating the fact that we did this and that this reply was received.

(Discussion off the record.)

Mr. Haycraft: I object to the receipt of the letter on the ground that it is immaterial and irrelevant to the issues in this case, and it will be seen from the contents that it refers to an oral conversation between counsel here for the respondent and some officials of the Department of Justice, the contents of which and the circumstances of which cannot and do not appear in the record. The matter of taking a question to the Department of Justice and getting an opinion, whether it is a violation of the Sherman Act, has no possible bearing on the issues in this case. 2840

Mr. Gross: I submit, if your Honor please, that the statement which I have just made in connection with the previous question, as to whether the matter was submitted to the Department of Justice, has a very material bearing upon this. I am not offering it on the ground that categorical consent was given by the Department. Your Honor is familiar with the form of this letter. I am just offering it to show the good faith and absence of any intent to violate the law, actuated by the desire on our part to be law-abiding citizens of the United States and to cooperate with the Government, rather than defy it. 2841

Mr. Haycraft: The matter of intent to violate any law is not within the issues of this proceeding.

2842 *Samuel P. Williams—Direct.*

Examiner Reeves: The objection will be overruled and the letter will be received in evidence as Respondent's Exhibit 34, with leave granted to substitute a copy.

Mr. Gross: I am perfectly willing to attach, at my brother's request, a carbon copy of the letter of October 15, 1928, but without acknowledging that it has any materiality upon the paper for the purpose for which I offer it.

Examiner Reeves: The copy of this letter will be received in evidence as Respondent's Exhibit 35.

2843

(The letters referred to were thereupon received in evidence and marked "Respondent's Exhibits Nos. 34 and 35".)

Q. Did you in response to a request of the Federal Trade Commission for information relative to the nature of the old respondent write the Chief Examiner of the Federal Trade Commission under date of December 12, 1927, answering all his questions? A. We did.

Q. Is that a copy— A. This letter is a copy of such letter from Edward R. Grier, President of Arrow-Hart & Hegeman, Incorporated, dated December 12, 1927.

2844

Q. In the preparation of which you took part? A. In the preparation of which I took part, and in which we furnished all the information desired, and with which we enclosed copies of all the proceedings in connection with the organization.

Q. In other words, with that letter went a mass of documentary papers as recited in that letter? A. Yes, sir, there were 19 enclosures.

Q. Were the facts stated in that letter when you sent them true to the best of your knowledge and belief? A. They were.

Mr. Haycraft: That is objected to, Mr. Examiner, as incompetent, irrelevant and immaterial to the issues in this case. This is merely repetition of evidence that is already in the record. It is a part of the preliminary investigation made by the Federal Trade Commission. It is encumbering this hearing, and will not have any evidentiary value.

Mr. Gross: The evidentiary value attaching to that document is for the purpose of showing that the moment the matter came to our hands this company has cooperated with the Government in its endeavor to disclose everything, 2846
and gave access to the Government to every paper it wanted from the moment the inquiry started.

Mr. Haycraft: That is not an issue in this case.

Mr. Gross: Will you admit that we furnished you and your Department every facility in getting the facts?

Mr. Haycraft: If it was relevant, I would.

Mr. Gross: I want it clearly understood that this company has endeavored to the fullest extent to give you and your superior, Mr. Hudson, and all branches of your Department, 2847
every access to the facts. If you will admit it on the record, I can save considerable documentary evidence.

Mr. Haycraft: It has no place in the case.

Examiner Reeves: The objection is overruled, and a copy of the correspondence described by the witness will be received in evidence as Respondent's Exhibit 36.

(Discussion off the record.)

2848 *Samuel P. Williams—Direct.*

(The correspondence referred to was thereupon received in evidence as "Respondent's Exhibit No. 36.)

Mr. Haycraft: I want to say on the record, without in any way waiving any objections that I have made to the admission of this class of testimony, that in my experience with counsel and parties respondents in this case that all parties have complied with every reasonable request that has been made to furnish information that they had access to.

2849 (Discussion off the record.)

Q. To your knowledge, did counsel, on behalf of this old respondent, under date of January 11, 1929, notify the Federal Trade Commission of the proceedings for the dissolution of the old respondent and the later organization of the new respondent? A. Yes, sir, counsel so notified the Commission on January 11, 1929, by letter.

Mr. Gross: I offer that letter, if your Honor please, that being Exhibit K, attached to our answer.

2850 Mr. Haycraft: The same objection as urged on the preceding exhibit.

Examiner Reeves: The objection will be overruled and the letter, identified by the witness, will be received in evidence as Respondent's Exhibit 37.

(The letter was thereupon received in evidence and marked "Respondent's Exhibit No. 37.")

Q. Did the old respondent receive any response to that letter until the issuance of the supplemental

complaint in this proceeding, which was issued June 29, 1929? A. No, there was no reply made to that letter and no reference to it, so far as I know, until the receipt of the supplemental complaint.

Q. Referring to Commission's Exhibit 52, the circular letter addressed to the preferred stockholders of the Arrow Electric Company and to the preferred stockholders of the Hart & Hegeman Manufacturing Company, signed by Mr. Grier, President of the Arrow Electric Company, and by yourself, as President of the Hart & Hegeman 2852
Manufacturing Company, I ask you whether that is the first step or time when the preferred stockholders of these two respective companies after the organization of the old respondent came into any part of the plan of reorganization? A. Yes, it was the first notice to preferred stockholders. There had been no communication with the preferred stockholders.

Q. The old company owned no preferred stock of either of those companies? A. It did not.

Q. These gentlemen, who are named as proxies, referring to Commission's Exhibit 44, Mr. Leon P. Broadhurst, William R. C. Corson, John O. 2853
Enders, Joseph R. Ensign, Philip B. Gale, and Robert B. Newell—I ask you whether anyone of those gentlemen was an officer or a director of the companies—any one of the four or five companies which are referred to in this proceeding? A. No, they were none of them officers or directors.

Q. Their positions, as stated in that Exhibit 44, were correct? A. Yes. They indicate the type of men which these gentlemen were, men of integrity, very highly regarded; men whom the public of

2854 *Samuel P. Williams—Direct.*

Hartford would feel very sure would not be identified with any questionable undertaking.

Q. When it came to these meetings of the directors of the four consolidating companies, held December 11, 1928, the Arrow Electric Company, the Hart & Hegeman Manufacturing Company, the Arrow Manufacturing Company, and the H. & H. Electric Company, and later the stockholders of these same four companies, on December 31, do you of your own knowledge know that they held those meetings and acted separately and in separate
2855 meetings for the purpose of passing the votes which have been introduced in the record as passed by them on those dates? A. Yes, I know that of my own knowledge.

Mr. Gross: I offer, if your Honor please, copy of Volume II of the General Statutes of Connecticut, Revision of 1918, and particularly five sections, which are an exhibit to the answer to the supplemental complaint as set forth in Exhibit J attached thereto, namely Sections 3520 to 3524, and ask that, with consent, the Exhibit J be marked rather than introduce the large volume of Connecticut statutes.

2856 Mr. Haycraft: May I have my objection recorded, as being incompetent, irrelevant and immaterial to the issues in this case?

Examiner Reeves: Objection overruled.

Mr. Haycraft: Exception.

Examiner Reeves: Exhibit J to the answer to the supplemental complaint will be received in evidence and marked Respondent's Exhibit No. 38.

(The document referred to was thereupon received in evidence and marked "Respondent's Exhibit No. 38.")

Mr. Gross: It may possibly be of assistance to the Examiner and to the Commission, in case they should examine the statutes of Connecticut to know that in 1930 there was a new codification of the law, taking in this revision of 1918 with the public acts of the various years since then, which becomes the general statutes of Connecticut, Revision of 1930, and these five sections I have offered are now in the new revision numbered Sections 3462 to 3466, inclusive, but there has been no change, to my knowledge, in the text. I offer the old statute because that was in force at the time of the acts in question. 2858

CROSS-EXAMINATION BY MR. HAYCRAFT:

Q. Reference was made in your testimony, Mr. Williams, to the declaring of dividends by the holding company. Were any dividends actually declared? A. Yes.

(There was discussion off the record.)

Q. What was the amount of them during the fifteen-month period? A. There were three quarterly dividends of 40 cents per share each. 2859

Q. During that period? A. Yes, sir.

Q. The minutes that you have identified and have been admitted in evidence, show the derivations and the source from which they came? A. Yes.

Q. With reference to Exhibit 33, which is a letter from Lybrand, Ross Brothers & Montgomery, dated November 22, 1928, with respect to the question of the tax aspects of the proposed dissolution of

2860 Arrow-Hart & Hegeman, Incorporated, I will ask you whether or not this question was brought about by the determination of the stockholders and directors and officers of Arrow-Hart & Hegeman, Incorporated, to bring about its dissolution? A. I don't quite understand your question.

Q. Well, I will frame it again. I take it in this letter you received from Lybrand, Ross Brothers & Montgomery, dated November 22, 1928, Exhibit 33, an opinion is given as to the effect of the distribution of stock of the Arrow Electric Company and

2861 Hart & Hegeman Manufacturing Company by the Arrow-Hart & Hegeman, Incorporated, if made to individual stockholders under a plan of dissolution, is that correct? A. Yes, sir.

Q. Reference, I notice, is made in this letter, and from your testimony also, "To meet the criticism of the Federal Trade Commission". Just what did you have reference to? What does this letter refer to when you refer to the criticism of the Federal Trade Commission? A. The term was used with reference to the original complaint of the Federal Trade Commission.

Q. Had you been advised by your attorneys that

2862 under the statute you had a right to answer the complaint? A. I believe we had answered the complaint.

Q. And you did? A. I believe our attorneys had.

Q. Had you been advised that the orderly and ordinary procedure under the proceeding of the Federal Trade Commission, after answer had been made, was to have a hearing before the Board of Review to determine whether or not there was sufficient ground to proceed further? A. I think that our counsel felt that we were perfectly entitled to go ahead with our dissolution.

Q. You didn't understand my question. Read the question.

(The last question was repeated by the reporter.)

Q. That was back in 1927.

Mr. Gross: I don't know what my friend is leading up to, but the references speak for themselves, and the opinion of counsel is in the record.

(Discussion off the record.) 2864

(The last question was read by the reporter.)

A. I don't recall.

Q. Did you attend a hearing before the Board of Review on April 3, 1928? A. Yes.

Q. With counsel? A. Yes, sir.

Q. That hearing was held in April, 1928. Subsequent to that time your counsel addressed a letter and had a conference with officials of the Department of Justice, as indicated in Exhibits 34 and 35? A. Yes, sir.

Q. And during that period of time did you take any steps to acquaint the Federal Trade Commission with your plan of consolidation which you brought to the attention of the officials of the Department of Justice? A. Not so far as I know. 2865

Q. Do you recall that at the Board of Review hearing a motion was made by Mr. Stevenson— A. At the hearing before the Board?

Q. Yes. Whether a plan for a physical merger would solve the problem? A. I think I recall something in the typed minutes to that effect.

2866 *Samuel P. Williams—Cross.*

Q. And you also recall that the answer was made to him by Mr. Clarke, Chairman of the Board, that the Commission, having taken action, it was like a *lis pendens?* A. That is undoubtedly there in connection with the inquiry.

Q. Do you know of any reason why you did not acquaint the Federal Trade Commission with your plan with respect to the proposed consolidation and merger which you did acquaint the officials of the Department of Justice?

2867 Mr. Gross: I object to it on the ground of its materiality.

Mr. Haycraft: Now, Mr. Examiner, I am entitled to cross-examine him to find out just what was the purpose of these various negotiations. I object to the introduction and going into the intention, but if the Examiner has ruled that it is relevant to the issues in this case, I think I am entitled to develop the matter a little further.

Examiner Reeves: The objection is overruled.

Mr. Gross: May I have an exception?

Examiner Reeves: Exception noted.

2868 A. We believed that we were entitled, and, in fact, it was practically necessary for us to withdraw from the position we had found ourselves in.

Q. Were you advised, or didn't you know at that time that the orderly and ordinary procedure in matters of this kind before the Federal Trade Commission was to hold hearings of this kind, where you would be entitled and enabled to present your side of the controversy, as is being done in this proceeding, you being protected by counsel, in an

orderly procedure? A. As far as I know, in any ordinary procedure, I supposed that that came before a complaint could be issued.

Q. Did you have any idea as to what would be the next step if the Federal Trade Commission enforced the Act? A. No, I did not.

Q. You didn't think it was ended? A. When we made the reorganization we did.

Q. You thought that the Commission had closed its proceeding? A. We believed that the Commission, after we had conformed to the complaint and ceased from the present method of doing business 2870
that it would close this proceeding.

Q. Did you receive advice from counsel to that effect? A. I think it was their opinion to that effect, yes.

Q. Do you have here an order of the Federal Trade Commission to cease or desist to do certain things pursuant to the statute? A. Yes.

Q. You had received no such order? A. No, we had received what we took to be the equivalent of an order—or to get off the grass.

Q. What had you received that you deemed equivalent? A. A complaint in the manner in which we were organized.

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Q. Had you received advice from counsel that the complaint was merely a preliminary step to determine whether the law had been violated, and that a hearing would be held, and later an order would be entered under the statute? A. I don't recall, except I understand there is no question that those considerations entered into it. In the final analysis it was believed that our action was a satisfactory conclusion of the matter.

Q. And yet you did not acquaint the Commission with your action so that the Commission itself could

pass upon it until after that had been consummated? A. No, they were consummated before.

Q. With respect to Commission's Exhibit 44, and the reference to the proxies, why was it necessary to have proxies appointed in that proceeding? A. I don't know that I can definitely say, because the papers were largely prepared by our counsel.

Q. Who were the stockholders that you were representing, you and Mr. Grier, when you addressed that letter? A. The stockholders of Arrow-Hart & Hegeman, Incorporated, the old respondent.

2873 Q. Would you say those stockholders were the same as those listed on Commission's Exhibit 96? A. To the best of my knowledge they are, yes, sir.

Q. Who selected the proxies that were listed in Commission's Exhibit 44? A. They were selected in a conference of our directors.

Q. And what were their instructions? A. To whom?

Q. To the proxies? A. They had no instructions.

Q. What do you mean, they had no instructions? A. They simply volunteered and agreed that they would act on behalf of the stockholders.

Q. For what purpose? A. In any manner which
2874 came up. I think that the proxy which was sent would tell.

Q. On page 3 of this same exhibit. A. Except in one respect, the attorneys would act.

Q. To vote on this plan of consolidation? A. To vote for the stockholders.

Q. On this plan of consolidation? A. Not at this time.

(Discussion off the record.)

Mr. Gross: I will say that the proxy on page 3 of Commission's Exhibit 44 is a statement of

the powers given to those proxies by the stockholders who signed the proxies.

Mr. Haycraft: That is all.

(Discussion off the record.)

Mr. Haycraft: I will stipulate that, so far as I am concerned, and so far as my contention before the Commission is concerned, I will assume that everything which the exhibits in this record purport to show was done was actually done, as indicated, including the giving of notice and filing of documents and the approval by the Secretary of State of 2876
Connecticut and various actions of the State.

(Discussion off the record.)

Mr. Gross: With the understanding, which counsel for the Commission courteously extends, that if any formal evidence has been omitted in the form of proof counsel for the respondent may correct the omission at the next hearing, I will rest the case.

(Discussion off the record.)

Mr. Haycraft: Mr. Examiner, I am not sure just what will be necessary to be put in in the matter of rebuttal until I have gone over the record to determine what issues are not com- 2877
pletely covered by testimony. I wish therefore to ask for time to go over the record and make up my mind, and, with permission of counsel for the respondent, I shall ask for an adjournment sine die, with ten days' notice for any further hearing.

Examiner Reeves: The hearing will be adjourned in accordance with the request of counsel for the Commission.

(Whereupon, at 1:40 P. M., June 19, 1931, the hearing in the above-entitled matter was adjourned sine die.)

2878 Court Room No. 2, United States Post Office, Pittsburgh, Pennsylvania.

July 22, 1931.

Met pursuant to notice, 10.00 A. M.

Before—WILLIAM C. REEVES, *Examiner.*

APPEARANCES:

EVERETT F. HAYCRAFT, Attorney for the Federal Trade Commission.

2879 WALLACE W. BROWN, Attorney for the Respondents, Arrow-Hart & Hegeman, Inc. The Arrow-Hart & Hegeman Electric Company (49 Pearl Street, Hartford, Connecticut).

PROCEEDINGS.

Examiner Reeves: We will proceed in the matter of Arrow-Hart & Hegeman, Incorporated, and The Arrow-Hart & Hegeman Electric Company, Docket No. 1498, pursuant to
2880 notice dated July 14, 1931.

Mr. Brown: If your Honor please, the Respondent at the last hearing virtually rested its case but it had not at that time had an opportunity to read over the record and an agreement was made with counsel for the Respondent and Mr. Haycraft whereby we might add further evidence to round out our case at the next hearing, and with your Honor's permission I should like to do that at this time.

Examiner Reeves: Did you desire to take additional oral testimony?

Mr. Brown: Yes, your Honor, I do.

Mr. Haycraft: I have no objection, Mr. Examiner.

Examiner Reeves: You may proceed, Mr. Brown.

SAMUEL P. WILLIAMS was thereupon recalled for further examination by the Respondents, having been duly sworn at a previous session. 2882

DIRECT EXAMINATION BY MR. BROWN:

Q. Mr. Williams, the record is not complete on the history, I think, of Hart & Hegeman and I should like to ask you to round that out a little bit. A. With respect to the names?

Q. With respect to the names of these Messrs. Hart and Hegeman. I suppose that is trivial but could you give us the names of the gentlemen who started with the company? A. The names were Gerald W. Hart and George S. Hegeman.

Q. It has been testified that you acquired the 2883 stock of the H. T. Paiste Company. I think it was also testified that in 1914 you first entered into contractual relations with the Paiste Company. What was the nature of that contract at that time? A. Why, I think it was in the record now that it was a selling contract whereby we sold the product of the H. T. Paiste Company.

Q. Now, thereafter did you acquire the capital stock of the Paiste Company? A. Yes, that is also in the record that it was acquired.

2884 *Samuel P. Williams—Recalled—Direct.*

Q. And was that over a period of years? A. Yes.

Q. Over what period of years would you say? A. The period covering about six years I think.

Q. At the time you entered into contractual relations with the H. T. Paiste Company what lines were they manufacturing? A. They manufactured socket materials, plug receptacles, cut-outs, porcelain wiring devices of various kinds which were not made by the Hart & Hegeman Manufacturing Company.

Q. At that time what did the Hart & Hegeman
2885 Manufacturing Company make? A. Almost exclusively switches, switch materials, plates, and things that related to the switch business.

Q. Now, as to the Electric Porcelain & Manufacturing Company. I believe it has been testified that you acquired the capital stock of that company? A. That is correct.

Q. In what year was that? A. That was in 1926.

Q. And what was the business of the Electric Porcelain & Manufacturing Company? A. That company manufactured porcelain as raw material for the Paiste Company and for Hart & Hegeman.

Q. Exclusively? A. They had a very small out-
2886 side business in stove handles and other products of that kind—very trivial.

Q. Did they sell their porcelain product exclusively to the Hart & Hegeman Company and the Paiste Company? A. Yes, except for the small business which I say they very promptly gave up —the business of stove handles.

Q. Now, it has also been testified that when Mr. Morris came into the Hart & Hegeman Manufacturing Company he acquired a majority of the capital stock. Did that situation continue up to the time of his death? A. Yes, it did. At the time of

his death he and the Trust which he had created held a majority of the stock.

Q. And at the time of his death how many common stockholders were there of the Hart & Hegeman Manufacturing Company? A. There were fifty-six.

Q. And what class of people comprised those fifty-six common stockholders? A. They were employees and associates in the business as well as close personal friends of Mr. Morris.

Q. During the Respondents' case Mr. Inch testified as to the combined total sales for the Arrow 2888
Electric Company and the Hart & Hegeman Manufacturing Company; also, for the Arrow and H. & H. Divisions. Mr. Inch's figures, however, did not break those sales down into divisions, nor did they include 1930 or the first six months of 1931. Would you read into the record and perhaps from the very beginning those sales broken down?

Mr. Haycraft: As I understand, these sales are going to compare with the figures by Mr. Inch?

Mr. Brown: Broken down and carried forward into this year.

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A. This will be a tabulation of these figures I will read.

Q. I should think you could simply read it right into the record. A. Total sales the year 1925: Arrow, $4,392,000; H. & H., $4,242,000; combined, $8,634,000. 1926: Arrow, $4,012,000; H. & H., $4,153,000; combined, $8,165,000. 1927: Arrow, $3,849,000; H. & H., $4,537,000; combined, $8,386,000. 1928: Arrow, $3,537,000; H. & H., $4,378,000; combined, $7,915,000. 1929: Arrow, $3,548,000; H. & H.,

2890 *Samuel P. Williams—Recalled—Direct.*

$4,599,000; combined, $8,183,000. 1930: Arrow, $2,987,000; H. & H., $3,469,000; combined, $6,456,000. First six months of 1931: Arrow, $1,271,000; H. & H., $1,418,000; combined, $2,689,000.

Q. It has also been testified, Mr. Williams, that subsequent to the year 1927 the Arrow Electric Company and the Hart & Hegeman Manufacturing Company and later the respective divisions, as a result of economies, offered merchandise to the public at lower prices than had theretofore prevailed.

2891

Mr. Haycraft: That is objected to. It is not quite as I recall the testimony. It leaves out one important element—the competition at the sources causing the lower prices.

Mr. Brown: I am not at this minute going into the cause. I am merely saying the lower prices were made. That is all I want at this time.

Mr. Haycraft: That is all right.

Q. (Continued) Have you made a study of that situation, Mr. Williams, so you can compare the prices substantially of each year following 1927
2892 with respect to the year 1927? A. Yes, we kept records which show as near as we can obtain the figures—which indicate that if we had been able to sell our material in the years 1928, 1929 and 1930 at prices prevailing in 1927, we would have received for those three years about $1,850,000.00 more than we did receive.

Q. Would you break that down into years 1928, 1929 and 1930—each year—with respect to the year 1927? A. Yes, we, of course, have the figures in that way. I am not saying that they are strictly

accurate but we accept these figures ourselves in our consideration of the matter, and the way they have run was that reductions during 1928 came to about $500,000.00. Of course, that same reduction pertained through 1929 and 1930. In addition to it, in 1929 the reductions in round figures amounted to $100,000.00, which also pertained during the following year, and there were further reductions in 1930 in excess of $150,000.00.

Q. And from that you arrive at your total of $1,800,000.00 plus? A. Yes.

Q. In the Respondents' case, Mr. Williams, it 2894
was also testified that there were four common salesmen. There were no common salesmen prior to January 1, 1931?

Mr. Brown: I believe that was testified; was it not, Mr. Haycraft?

Mr. Haycraft: Some time like that.

A. That is true.

Q. Have you caused a study to be made of the proportionate amount of business those common salesmen have produced in the first five months of 1931 with respect to your business? A. Yes, our statistical department prepared the figures showing 2895
that those four men had done 3.3 per cent.

Mr. Brown: That is all.

Examiner Reeves: You may cross examine.

CROSS EXAMINATION BY MR. HAYCRAFT:

Q. Just what territory was taken into account in making your calculation? A. There was Maine, Connecticut, Texas. I am not sure that I can recall the fourth. It is in the record, Mr. Haycraft.

2896 *Samuel P. Williams—Recalled—Cross.*

Q. Does the Texas salesman include the city of New Orleans? What territory does that Texas salesman cover? A. It does cover the city of New Orleans and southwest Louisiana.

Q. That estimate you made with respect to the comparison of prices of 1927 and subsequent years. The comparison was made between the price that you actually received for the articles in those years as compared with the price you actually received in 1927? A. I don't know that I quite understand, Mr. Haycraft.

2897 Q. How did you arrive at your $500,000.00 difference in 1928 compared with 1927? Where did you obtain the figures? A. Those figures are kept by our statistical department in charge of Mr. Carroll, who undertakes to have that sort of information available for us, as to how much we are suffering in our business.

Q. Are the comparisons of the prices that you received in 1928, for instance, and the prices that you received in 1927 for the same articles? A. I judge they are. We can't be sure the composition of our sales will remain uniform from year to year and we have to assume there will be some fair

2898 uniformity in the type of materials sold. It is an approximation but a fairly accurate one. It is an approximation we accept in our consideration of these matters among ourselves at home. It never could be absolutely determined. We all realize that.

(Witness excused.)

Mr. Haycraft: I understand the Respondent definitely rests its case at this time?

Mr. Brown: Yes, the Respondent rests its case at this time.

Examiner Reeves: Are you ready to proceed, Mr. Haycraft?

Mr. Haycraft: Yes, I will ask Mr. Webb to be sworn.

FREDERICK E. WEBB was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT: 2900

Q. State your full name, Mr. Webb, your residence and your occupation. A. Frederick E. Webb.

Q. Where do you live? A. Rochester, New York.

Q. What is your occupation? A. Secretary.

Q. What concern? A. Requa Electric & Supply Company.

Q. In what business is that company engaged? A. Wholesale electrical supplies.

Q. What territory does it cover? A. About a fifty mile radius of Rochester.

Q. Do you travel salesmen? A. Yes.

Q. How many? A. Five at the present time.

Q. The products of what manufacturers do you handle? A. Wiring device manufacturers? 2901

Q. Yes, wiring device manufacturers. A. We handle the products of the H. & H., Arrow, Harvey Hubbel, Pass & Seymour, Cutler-Hammer.

Q. How long have you been handling Hart & Hegeman products? A. Twelve or fifteen years.

Q. And how long have you been handling the Arrow products? A. About twelve or fifteen years.

Q. Back in 1927 where did you purchase your Arrow products—from whom? A. Arrow Electric Company.

2902 *Frederick E. Webb—Direct.*

Mr. Brown: Mr. Haycraft, when you say "in 1927" do you mean the whole year of 1927 or are you referring to the period before or after the formation of the company?

Mr. Haycraft: Prior to October, 1927.

Q. Prior to October, 1927, from whom did you purchase the Arrow products? A. Arrow Electric Company.

Q. Located where? A. Hartford, Connecticut.

Q. Do you recall the name of the salesman who
2903 called on you at that time? A. Mr. Smith.

Q. From whom did you purchase the Hart & Hegeman products? A. Mr. Baldwin.

Q. Where were the goods shipped from? A. Hartford, Connecticut.

Q. They were two separate organizations at that time? A. Yes.

Q. Did Mr. Baldwin and Mr. Smith have offices in Rochester? A. No.

Q. How often would they call on you for soliciting business? A. Approximately every three or four weeks.

2904 Mr. Brown: If your Honor please, at this time it seems apparent that Mr. Haycraft's general line of inquiry is the same line of inquiry that was put to jobbers in Hartford, Boston and New York. I refer to the hearings there. And your Honor will recall that at the close of the Government's case, Volume 9 of the record, page 554 and so forth, there was a stipulation entered into that the jobber testimony taken should be typical. If your Honor's recollection is not fresh on that stipulation, I would be glad to read it from the record, and it occurs to me that that stipulation governs this situation.

Examiner Reeves: What is the contention of counsel for the Commission?

Mr. Haycraft: The contention is, of course, that in the rebuttal testimony it was my purpose to attempt, if possible, to rebut some of the testimony of the witnesses for the respondent, particularly with reference to competitive conditions after the acquisition took place. It is true that in the testimony of this witness today I have followed the same general type of questions to lay the proper foundation but I am not through with the witness yet and it 2906
is my purpose to ask at least three or four questions which will have direct reference to the competitive situation after the acquisition, which I hope to contradict or at least qualify some of the testimony that was produced by counsel for the respondent. Of course, if I am not successful in that, it is taken into consideration in weighing the testimony. I will say at this time it is not my intention to merely place in the record cumulative evidence of the matters which were covered by the stipulation. Naturally, the testimony mentioned in the stipulation was different in respect to different 2907
witnesses. One witness testified to one thing and another to another set of facts. Of course, it would be difficult for me to lay any foundation in an examination of a witness of this character without probably asking some of the same questions that I did ask of the witnesses in the examination in chief.

Mr. Brown: If your Honor please, naturally, in calling ten or a dozen or two dozen witnesses the questions are going to vary some, but it was the sum total of that testimony which we all

2908 *Frederick E. Webb—Direct.*

agreed would be typical of the country. The respondent did not then fear and does not fear now further jobber testimony but the stipulation was entered into primarily to avoid expense and inconvenience and accumulation in the record which would otherwise have occurred. Now, Mr. Haycraft's questions in his other jobber testimony were all certainly directed to the competitive situation. If they were not, what were they directed to? And if this thing is allowed, our stipulation becomes
2909 practically annulative because we can be taken in the four corners of the United States on so-called rebuttal. It seems to me that the entire testimony of Mr. Haycraft was along the line of what is the competitive situation, and in a letter written to me by Mr. Haycraft under date of July 10th of this year Mr. Haycraft speaks of his purpose to rebut specifically testimony of Mr. H. L. Everest. In fact, he confines himself entirely to rebuttal of Mr. H. L. Everest. He says: "It is my understanding that you may object to the introduction of this testimony because of the stipulation entered
2910 into between Mr. Gross and myself just before I closed my case in chief, Record, pages 554-555. While of course I have not examined minutely the testimony of all the witnesses referred to in that stipulation, it is my recollection that they were not asked questions specifically with respect to the points I have in mind in my rebuttal testimony, namely, the competition between the two companies and later the two Divisions subsequent to the acquisition of stock in October, 1927."

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I have examined the testimony more minutely than perhaps Mr. Haycraft has and certainly his whole jobber testimony was directly pointed at competition, and that apparently is what he is directly pointing at right now, and I say that our stipulation should amount to something.

Mr. Haycraft: I don't think the stipulation would prevent a man from answering certain specific testimony in respondents' case by testimony in rebuttal.

Mr. Brown: We took, if your Honor please, Mr. Haycraft's witnesses in entering into that stipulation. Mr. Haycraft presumably called witnesses whom he considered most favorable to him. There were jobbers in all those territories—many jobbers—many of them high class jobbers whom his investigator must have questioned but whom he didn't call. Therefore, presumably he got the testimony which was most favorable to him on the competitive situation. Yet we didn't object. We said, "We will take your best witnesses from jobbers and say that is typical of the country", and in doing that, if anything, we prejudiced ourselves but we did it to avoid a terrific expense, and it is that consideration which is prompting us right now to object.

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Examiner Reeves: The Examiner will assume that the testimony of the witness will be limited to testimony strictly in rebuttal, and with that assumption the objection is overruled.

Mr. Brown: May I have an exception?

Examiner Reeves: Exception will be noted.

Mr. Brown: Of course, your Honor, I realize at this point that my objection is perhaps pre-

2914 *Frederick E. Webb—Direct.*

mature but before we launched into this whole thing I wanted my position to be clear and perhaps later on, when the questions come up, I can perhaps make it more specific, but I would like to have that general objection.

Q. Does Mr. Baldwin still solicit business for the Hart & Hegeman products? A. Yes.

Q. And does Mr. Smith for the Arrow products? A. Yes.

Q. And during the past year has there been any change in the solicitation of these two salesmen?
2915 A. No.

Q. Does Mr. Smith call at the present time as often as he did prior to a year ago? A. No.

Q. How often does he call now?

Mr. Brown: If your Honor please, at this point we have now come to specific questions which I say are identical to questions put in Boston, New York and in Hartford to jobbers and I therefore object on the ground that it violates the stipulation between counsel. I move to have the question stricken out.

Mr. Haycraft: Mr. Examiner, at the time the
2916 witnesses were asked the questions by counsel for the Commission in chief the questions were all generally with respect to the competitive situation, particularly prior to the acquisition. Counsel for the respondent in examining his witnesses, particularly the witness Mr. Everest, emphasized the competitive situation subsequent to the acquisition, the testimony being to the effect that there was no change. It is my purpose in the questions I am asking this witness at the present time, and in the other witnesses I have subpoenaed for this hearing here

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and the one in Chicago, to attempt to show that there were changes and that conditions did change subsequent to the acquisition of the stock some time during the past year or so. It is testimony that is more specific to show what these changed conditions are which I hope—it is my intention and information I have will show that competition had changed.

Mr. Brown: If your Honor please, I just can't offhand go into the entire jobber testimony but I do recall one place in the record where almost this identical question was put.

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I refer to the testimony of Benjamin Golden in New York. It commences on page 493 of the record and on page 498. "Q. Does Mr. Gabry call on you quite regularly? A. Yes. Q. About how often? A. Couple of times a week. Q. How long has it been since any other salesman called on you? A. Maybe six months." There, your Honor, is precisely what Mr. Haycraft is going into at this moment.

Examiner Reeves: Just what testimony is it that counsel for the Commission is undertaking to rebut at this time?

Mr. Haycraft: The testimony of Mr. H. L. Everest particularly, as found on pages 848 and 849, cross examination: "Q. If I am correct in understanding your testimony—if I am wrong, I want you to correct me—it is your contention that the competition between your concern—that is, the Hart & Hegeman Company, now the Hart & Hegeman Division—and the others is as strenuous and as keen and as strong today as it has been for the past four or five years and as it was before October, 1927. Is that correct? A. As far as I have any knowl-

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edge, that contention is absolutely true. Q. In making that statement you took into consideration that since October, 1927, the same people own and control both concerns and that both divisions are operated by one concern, the goods are exactly the same, you have a common sales manager, common sales division managers and in some instances combination salesmen?" There was some objection as to some instance or reference there and finally the witness answered: "They most certainly were."

2921 Now, it seems to me that counsel for the Commission should be allowed some latitude in attempting to prove or disprove rather the statement made by that witness as to the competition since the acquisition of the stock. Naturally, at the time the case in chief was put in I didn't anticipate that that contention would be made or I suppose I would have tried to cover the situation in a general way.

Mr. Brown: I am sorry, Mr. Haycraft, I didn't understand you. You didn't understand we would make what contention?

Mr. Haycraft: I didn't understand the con-

2922 tention would be made that there was as much competition today as there was prior to October, 1927.

Mr. Brown: If your Honor please, may I say this in answer to that: it was the Government's case and it was the Government's burden and has been from the outset to prove affirmatively that competition did cease. It has not been the respondents' burden to prove that it existed. Now, the Government by Mr. Haycraft took extensive jobber testimony over three territories, including two large territories, and

that jobber testimony was with the intent of showing the lessening of competition, and we agreed that that jobber testimony was typical of the country. Now, in the references Mr. Haycraft just gives he is cross examining a defense witness. In view of the Government's contention that we did lessen competition, naturally when the respondent put in its own case it denied it. It is not an affirmative matter and Mr. Haycraft in his contention is simply going back to his original case to seek to produce proof that competition was less. He is not 2924 rebutting us at all.

Examiner Reeves: The objection will be overruled. You may proceed, Mr. Haycraft. Exception is noted.

Q. (Previous question read by reporter as follows: "How often does he call now?") A. Probably every six weeks—two months possibly.

Q. How long has it been since he began to make his visits farther apart as has been testified to? A. Probably a year or year and a half.

Q. How do you fix that date? A. I fix it for the reason that we have discontinued carrying the Arrow line. 2925

Q. You mean discontinued stocking it? A. Yes.

Q. At what time? A. About a year or year and a half ago.

Q. Will you state why you discontinued stocking the Arrow line? A. Because we have five different scheduled manufacturers' line in stock and we wanted to reduce our investment.

Q. Do you continue to stock and purchase the Hart & Hegeman line? A. Yes.

Q. Did you acquaint this situation to Mr. Smith, the salesman for Arrow Company? A. Yes.

2926 *Frederick E. Webb—Cross.*

Q. What response did he make on your pronouncement? A. Stated he would take it up with his division manager and would inform us.

Q. Who was the division manager he would take it up with? A. Mr. Wentworth.

Q. Where does he have his office? A. Syracuse, New York.

Q. Is he division manager for the H. & H. Division as well as the Arrow Division? A. Yes.

Q. Did he say anything more to you about it after that? A. Yes, he came to Rochester and
2927 asked us our reason for wanting to not stock the Arrow line and our reason was that we didn't want to carry both lines that consisted of the same items.

Q. You told this to Mr. Wentworth? A. Yes.

Q. Do you remember about when it was you told him that? A. About a year or year and a half ago.

Q. How would your purchases of Arrow products during the past year compare with H. & H.? A. This past year?

Q. Yes. A. Considerably less than H. & H.

2928 Mr. Haycraft: I think that is all.

Examiner Reeves: You may cross examine.

CROSS EXAMINATION BY MR. BROWN:

Q. Mr. Webb, it was only after you discontinued the Arrow line and so notified the Arrow salesman that the Arrow salesman called less frequently, was it not? A. Yes.

Q. Before that notice he called with the same frequency that he always had? A. Yes.

(Witness excused.)

HOWARD FINK, was thereupon called as a witness, and having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you state your full name, residence and occupation? A. Howard Fink, 1950 Everett Avenue, Youngstown.

Q. In what business are you engaged? A. Wholesale electric supplies.

Q. Under what name? A. The Hood Electric Company. 2930

Q. Is that a corporation? A. Yes, sir.

Q. What position do you hold? A. Vice President.

Q. In what business is that company engaged? What products does it sell? A. Electrical supplies.

Q. Including wiring devices? A. Including wiring devices, yes.

Q. Do you have anything to do with the purchase or sale of wiring devices? A. I do.

Q. And from whom do you purchase wiring devices at the present time? A. Arrow Electric Company. 2931

Q. How long have you purchased from the Arrow Electric Company? A. Since 1924.

Q. Have you made any purchases from the H. & H.? A. Our dealings have all been with Arrow.

Q. Since October, 1927, have you purchased any Hart & Hegeman supplies? A. A few.

Q. And how would you place the order? A. Through the Arrow Division.

Q. And what salesman called on you and solicited your business from the Arrow? A. Mr. Henry.

2932 *Howard Fink—Direct.*

Q. How long has he been representing them? A. Since 1924 he has called on us.

Q. He has been calling right along? A. Yes.

Q. Has there been a Mr. Rogers? A. That is Mr. Henry's successor.

Q. How long has Mr. Rogers been calling? A. Since last October about.

Q What Hart & Hegeman products have you purchased in the manner that you have described? A. Switches that were different from the regular line.

2933 Q. That is, you mean the catalogue line or the shelf line? A. Yes, different from the catalogue line and then some sockets. I think that has been the extent of our purchases.

Q. Has there been any change with respect to the business policy of the Arrow Electric Company, say within the past year or two?

Mr. Brown: If your Honor please, I would like to renew for this witness the same objections I made to the testimony of the other.

Examiner Reeves: The objection will be noted and overruled. Exception noted.

2934 Mr. Brown: On this particular question too, your Honor, I think possibly Mr. Haycraft is asking a form of conclusion that has been objected to when the respondent has put it. I don't know that this witness is qualified to testify on Arrow policies and I object on that ground.

Examiner Reeves: I think the former question is subject to objection.

Mr. Haycraft: I will withdraw the former question.

Q. To what class of trade do you sell your products? A. To electrical contractors, industrial plants.

Q. Does anyone representing the Arrow Electric Company call upon your customers and assist you in the sale of their products? A. They do.

Q. Who does that? A. Mr. Rogers now.

Q. Who before that? A. Mr. Henry.

Q. Do you know a Mr. Sayre? A. I know of him. I don't know him personally.

Q. Who is he? What does he do? A. He handles the specials or something out of the ordinary. 2936

Q. Is he the one who obtained this business you referred to before of the H. & H.? A. I don't know how that was obtained. It just came to us in the regular channels. The order would be given to our salesmen.

Q. Are you acquainted with Mr. Sayre—that is, know what he does? A. Just in a general way.

Q. Does he introduce any of the Arrow line—any of the Arrow products? A. Well, I don't know. I don't come in contact with him.

Q. You mean he does not call at your place of business? A. No. I think he has been there once.

Q. Where does he have his office? A. Cleveland, I understand. 2937

Q. In selling your products to your customers is there any suggestion made to you by the Arrow Company as to the price you will receive? A. There is.

Q. How is that expressed to you? A. They publish a dealers sheet which has the prices listed there at which they should be sold for.

Mr. Brown: If your Honor please, I object to the line of testimony, not only on the other

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ground I put but also on the ground this is not in the purview of the rebuttal which Mr. Haycraft said he would take. This has nothing to do with the competition between the two divisions or between the two companies.

Mr. Haycraft: I am not so sure of that before I get through with it.

Examiner Reeves: Objection is overruled. Exception noted.

2939 Q. Has anything further been done by the Arrow Company along the line, recently, I mean? A. Not to my knowledge.

Q. Have you received any letter or circular from the Arrow Electric Company warning you that if you did not maintain the jobber's retail prices, that they would not sell you further?

Mr. Brown: I object to that for the same reason. This is not rebuttal at all, your Honor.

Examiner Reeves: Objection will be sustained.

2940 Q. I refer you to page 547 of the record, examination of Mr. Grier with respect to policy on retail price maintenance,—547 and 548. "Q. Did you have any policy with respect to the insistence on your jobbing customers as to maintaining their retail price? A. None. We never had that policy under any conditions. Q. As compared with the price that you quoted to your jobber customers, how were they expected to sell to their trade? A. Exactly as their commercial reasons dictated. Will you read that question, please? (The last question was read by the reporter.) A. (Contin-

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uing) That was entirely up to their discretion. Q. Did you suggest any price at all? A. That question I can't remember at that time."

Mr. Brown: If your Honor please, this testimony Mr. Haycraft refers to was his own questioning of Mr. Grier. It is not an allegation of the complaint and, furthermore, it is not within the purview of the rebuttal which Mr. Haycraft in his letter of July 10th to me directed himself.

Mr. Haycraft: Mr. Examiner, I am directing all this testimony to the question of competition after the acquisition. Now, the purpose of this testimony is to show that there was a change in their policy with respect to maintenance of retail prices. Before the acquisition took place there wasn't any such policy. According to this witness, within the past six months there has been a warning letter going out to the trade with respect to the maintenance of retail prices.

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Mr. Brown: Your Honor, if that is true, and I don't see how it is true, I don't see how that bears on the situation between Arrow and Hart & Hegeman. This witness is not a Hart & Hegeman jobber. He doesn't stock it. He has only had a few goods.

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Mr. Haycraft: His testimony is with respect to the class of trade, type of commercials, the few companies sold before the merger took place. This testimony is to show that the business policy of the Arrow concern has changed since the acquisition with respect to the maintenance of retail prices by its customers.

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Examiner Reeves: Is it your contention that that might become material?

Mr. Haycraft: Yes, it seems to me it is material.

Examiner Reeves: What is the materiality, if any?

Mr. Haycraft: Well, there certainly is competition. One element of competition would be the restriction that might or might not be placed upon any jobber customer in the resale of his product. A jobber customer who

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does not have any such restriction placed on him may compete more freely in the trade for the business of contractors, builders, and so on.

Mr. Brown: How does that have anything to do with the competition between the salesmen and the two divisions?

Mr. Haycraft: I am not restricting my examination to that.

Mr. Brown: Or between the two manufacturers? How does it have any bearing on that competition?

Mr. Haycraft: Because the business policy

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of a manufacturer with respect to the resale of products by his customers is a vital element of competition. Many of these customers could not get Hart & Hegeman products because of their resale price policy. They were not recognized and considered as jobbers in the trade. There was a letter in evidence here showing that the Hart & Hegeman line could not be handled by the Arrow line jobbers and the restriction was placed on them. I am trying to show that subsequent to the acquisition of these two concerns—since they were merged—that

the Arrow Company, which had had a more liberal policy, was beginning to tighten up on the resale policy, which to my mind is indicative of a change in the competitive situation.

Mr. Brown: Your Honor, I object to the flat statement by Mr. Haycraft that jobbers could not get Hart & Hegeman goods, or something like that. I object to that as a statement.

Mr. Haycraft: The evidence is in there. The circular will speak for itself.

Mr. Brown: But over and above that, if Mr. 2948
Haycraft's contention were true, which we stoutly deny, that policy would affect not Hart & Hegeman alone. It would be equally applicable to Bryant and General Electric and Hubbell and Webber. It has nothing to do with the competition between the two companies which Mr. Haycraft says he is restricting himself to, and I don't see how it has any bearing on ultimate competition between any companies. The companies are competing to sell their lines. If they did have a resale policy, that wouldn't prevent any one company from competing with every other company. That has 2949
nothing to do with competition. That would be purely a matter of price policy and it has no place in this proceeding in my opinion.

Examiner Reeves: The objection by counsel for Respondent will be sustained.

Mr. Haycraft: Exception, please.

Examiner Reeves: Exception will be noted.

Mr. Haycraft: I think that is all.

2950

CROSS EXAMINATION BY MR. BROWN:

Q. Mr. Fink, you handle electrical supplies in general, do you? A. Yes.

Q. And wiring devices are a small part of your general business? Electrical wiring devices are what per cent would you say? A. Well, probably twenty-five per cent.

Q. And you have carried Arrow Electric almost exclusively as your wiring devices? A. No. we have C. & S.

2951

Q. In an equal amount to Arrow? A. No, very small amount of C. & S.

Q. Have you ever on occasion for special purposes ordered anything from Bryant or General Electric or Hubbell or Webber or Cutler-Hammer? A. We have from Cutler-Hammer.

Q. You have on occasions? A. Yes.

Q. To fill a special need? A. Yes.

Q. Now, you speak of on occasions getting H. & H. goods. Has that been trivial in amount? A. Yes.

Q. The times when you have bought H. & H. have not been limited to 1927 and after, have they? A. No.

2952

Q. You bought some before 1927? A. Yes.

Q. And when you bought H. & H. goods before 1927 how did you do it? A. Well, I don't remember whether we would buy them through another jobber or how. I don't remember how that was done.

Q. Well, the way you would buy would be the same then as now, wouldn't it? A. Now we just send the order to the Arrow Company.

Q. You mean the Arrow-Hart & Hegeman Electric Company? A. Yes.

Q. You send the order direct to that company? A. Yes, we send the order direct to that company.

Q. And that is uniformly true? If ever you want H. & H. goods you send your order direct to the Arrow-Hart & Hegeman Company? A. We buy so small a quantity of the Hart & Hegeman material I don't know how it would be handled. The small quantities we buy, or the small quantities we get orders for, we buy from the Arrow-Hart & Hegeman Company.

Q. When you wish to buy H. & H. goods it is because you are not able to obtain those particular goods from your regular manufacturer? A. That is the idea, yes.

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Q. And it is because you have had some call for those particular items from your own customers? A. They are special.

BY MR. HAYCRAFT:

Q. How are most of your orders for Arrow goods placed? A. They are sent by us to Detroit.

Q. And then to the district office there? A. To the district office in Detroit, yes.

Q. To the Arrow Division of the Arrow-Hart & Hegeman factory? A. Yes.

Q. When you place an order for the Hart & Hegeman product do you attach that or make a separate order? A. We would not make a separate order probably.

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Q. Just put it on the same blank? A. Yes, put it on the same blank.

Q. Who would furnish you those orders for the Hart & Hegeman articles that you would have to place as specials on such an order? A. Our own salesman would bring them in.

Q. Where they had been specified? A. Yes, where they had been specified.

2956 BY MR. BROWN:

Q. You testified, I think, a bit ago, Mr. Fink, that you were not personally very familiar with the manner in which your orders were placed. Isn't that correct? A. That was prior to 1927.

Q. But you have become familiar since then? A. Yes.

Q. In what capacity? A. Well, I place the majority of them.

Q. You, yourself, act as purchasing agent? A. Yes.

2957 BY MR. HAYCRAFT:

Q. Who is in charge of the Arrow Division of the Hart & Hegeman Manufacturing Company at Detroit? Do you know the man's name? A. I have forgotten.

Q. Is it Bluebeck? A. That is it, yes.

Q. Did he use to be in Chicago? A. Yes.

Q. Was your company originally under the Chicago area division and later changed? A. Yes. Mr. Wildauer was in charge of the Chicago office.

2958 (Witness excused.)

ROBERT W. BROWN was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Give us your full name, address and occupation. A. Robert W. Brown, 6375 Penn Avenue, Pittsburgh.

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Q. In what are you engaged? A. Electrical supplies—jobbers.

Q. What is the name of the firm? A. Pittsburgh Electric Manufacturing Corporation.

Q. What is your position with that firm? A. President of the company.

Q. How long have you occupied that position? A. In the new corporation since 1929. I bought over the old company on March 11, 1929.

Q. Before that time what did you do? A. I was receiver for the old company since August 11, 1922.

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Q. During that entire period of time did you have anything to do with the purchase of the products that you handle? A. I have been buying all the supplies.

Q. Do you handle electric wiring devices? A. Yes.

Q. Prior to October, 1927, from whom were you purchasing electric devices? A. Prior to that time it was practically 85 per cent Arrow goods.

Q. And then what other products? A. Other wiring devices products?

Q. Yes, wiring devices besides Arrow? A. We were buying some H. & H. and a little Bryant.

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Q. How long had you been buying the Arrow? A. Back to 1920 or 1921.

Q. When did you start buying the H. & H. line? A. In about the spring, about five years ago.

Q. About 1926? A. '26 or '27, and that I am not positive.

Q. And do you recall the occasion? A. It was about the time of the Jobbers' spring convention in Hot Springs. I know Mr. Everest was on his way back to Hartford at the time and he stopped in Pittsburgh and I talked to him a few hours and placed an order with him that day.

2962 *Robert W. Brown—Direct.*

Q. Was that Mr. H. L. Everest, the salesmanager of the Hart & Hegeman Manufacturing Company? A. At that time he was, yes.

Q. Now, since October, 1927, how have you purchased your wiring devices? That is, from what concerns and what changes, if any, have there been in the quantity that you bought from the respective organizations? A. Since 1927 we have purchased Arrow, Hart & Hegeman, Bryant, Cutler-Hammer, C. & S.

Q. When did you begin to buy Bryant? A. 1928.

2963 Q. Have your purchases from Bryant since that time been substantial? A. It has been our major line since that period.

Q. When did you begin to buy the C. & S.? A. About eight or nine months ago.

Q. When did you begin to buy Cutler-Hammer? A. Three years ago.

Q. I show you Respondents' Exhibit No. 31, which is a tabulation of sales made by the Hart & Hegeman Company and later the Hart & Hegeman Division of the Arrow-Hart & Hegeman Incorporated to certain selected customers, including Pittsburgh Manufacturing Company in Pittsburgh, and direct your attention to the figures given for 1927

2964 and 1928, which shows approximately $4,000.00 less in 1928 as compared to 1927 for the Arrow and $2,000.00 more, 1928 over 1927, for the H. & H., and ask you what explanation you can offer for the relative changes in the quantity of products bought by your firm as indicated on that exhibit. A. H. & H. shows an increase of approximately $2,000.00 due to one industrial account buying material to H. & H. specifications; especially a thirty ampere tumbler switch used in manufacturing improved gasoline trucks. Also, sockets which have to be made special according to special specifications.

Q. Are those two items listed in their catalogue? A. The switch item is not listed by either Arrow or Hart & Hegeman. They have blue prints on the special stock and you can only buy them from the H. & H. Division.

Q. About when was that account? A. We have had the account for five years but haven't always had them on those particular devices. The business was originally solicited by Hart & Hegeman and billed through us.

Q. Your answer that you have just given accounts for the increase in the Hart & Hegeman. What have you to say with respect to the decrease in the Arrow business? A. Taking on Cutler-Hammer and Bryant, two other manufacturers in wiring devices. 2966

Q. Who was the salesman that solicited the Arrow business from you since October, 1927? A. James McCoy.

Q. And does he solicit Arrow business at the present time? A. No.

Q. When did he last solicit the Arrow business? A. Prior to the first of July.

Q. How often did he solicit before that time? A. At least once a week and sometimes twice a week.

Q. Did he give you any service in the way of missionary work among your customers? A. Yes. 2967

Q. Who solicited for the Hart & Hegeman Manufacturing Company since October, 1927? A. George K. Noel.

Q. How long did Mr. Noel solicit? A. A little over a year.

Q. And then who succeeded him? A. Mr. Tuttle.

Q. How long did he solicit business? A. I am not sure but less than a year I would say.

Q. And then who succeeded him? A. John Watkinson.

Q. Is he soliciting at the present time? A. Yes.

2968 *Robert W. Brown—Direct.*

Mr. Brown: If your Honor please, at this point—I have let this go on on the assumption that my general objection to the entire line of testimony prevails of course. This is the same sort of testimony that I objected to before and I should simply like to have it noted on the record.

Examiner Reeves: It may be so noted on the record that the objection is made and overruled.

Mr. Brown: May I have an exception?

2969 Examiner Reeves: Yes.

Mr. Haycraft: I would like to direct the Examiner's attention to testimony of Mr. Everest, beginning on page 832, running through page 836, with specific reference to this account and the reasons why it had been taken away from the Arrow Company and why the business with the Hart & Hegeman Company had been increased.

Q. Since October, 1927, did anyone else representing the Arrow Electric Company call on you in behalf of that concern besides Mr. McCoy? A. Mr. Alexander.

2970 Q. And when did he call on you? Who was Mr. Alexander at the time he called on you? A. He had charge of this territory, working out of Philadelphia.

Q. For both divisions? A. I believe he came through before when he was with H. & H., although of that I am not positive.

Q. How long has he been representing both divisions? A. Just exactly how long I don't know.

Q. Prior to his calling on you did anyone else ever call on you representing the Arrow line besides Mr. McCoy? A. Mr. Deacon came through once in a while.

Q. He was at that time working out of where? A. New York City.

Q. You were under the New York division at the time Mr. Deacon called on you? A. Yes.

Mr. Haycraft: That is all.

Examiner Reeves: You may cross examine.

CROSS EXAMINATION BY MR. BROWN:

Q. Mr. Brown, how much did that industrial account amount to that you spoke of on your direct examination? A. Well, it was spasmodic. That is, quantities that were purchased one month didn't 2972
necessarily mean duplicating the same quantity next month. They usually placed an order for 800 switches at a time, amounting to 65 cents a piece, and sometimes that would last six weeks and sometimes two months. In connection with that, they also used a specially constructed single socket which they usually purchased in lots of 5,000 at a time and that five thousand quantity would run sometimes four months and sometimes five months.

Q. That was what is known as special appliance business? A. Yes, made specially.

Q. Could you give us any approximation of how much that would amount to in a year, or how much 2973
it did amount to in any given year? A. Well, I could tell pretty well from the H. & H. purchases for 1931, the first six months I guess, $4,839.00 so far. I should judge $3500.00 of that would be special items for this one particular account.

Q. How about the years 1927, 1928, 1929 and 1930? A. Wasn't heavily involved at that time with any particular account.

Q. That is, this industrial account you speak of with H. & H. developed in the last year or two? A. Within the last three years.

2974 *Robert W. Brown—Cross.*

Q. Now, if I said you placed with Arrow in 1929 $29,226.00 worth of business, would you say that was correct? A. Yes.

Q. And in 1927 $22,320.00? A. Yes.

Q. In 1928 $18,697.00? A. Yes.

Q. And in 1929 $13,844.00? A. Yes.

Q. And in 1930— A. (Interrupting) $8,552.00.

Q. Now, taking H. & H. Would I be correct in saying H. & H. sold you no merchandise whatever in 1926? A. That is right.

Q. And would I be correct in saying in 1927 H.
2975 & H. sold you $8,617.00, which would be general jobbing lines? A. Yes, general jobbing.

Q. In 1928 H. & H. sold you $10,893.00? A. Yes.

Q. Same line? A. I believe at that time we were getting some business from the industrial account. We were getting little dribs of that.

Q. Just trivial? A. Yes; some would be included in that amount there.

Q. But not substantially? A. No.

Q. Is it correct your H. & H. purchases amounted to $5,402.00 in 1929? A. Yes.

Q. And amounted to $10,541.00 in 1930? A. H. & H.?

Q. Yes. A. I have $10,591.18.

2976 Q. During all the years mentioned have Arrow and H. & H. salesmen vigorously solicited you for their business? A. Yes.

Q. Does that situation continue today? A. Up until three weeks ago. The Arrow has no representative here at this time.

Q. Did you know Mr. McCoy was discharged as a salesman of the Arrow? A. Yes.

Q. And you have been notified another salesman will be put on to take his place? A. Yes, I received a letter.

Q. So that the cessation of the solicitation you speak of is a purely temporary matter? A. Yes.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Mr. Brown, when you say that your purchases of Hart & Hegeman products in 1927 of specialties was not substantial, what do you mean? How much of that $8,617.0 would you say was for specials? A. That was practically all regular catalogue items.

Q. In 1928 where there was an increase of about $2,000.00, what would you say in respect to that? A. We dropped off on standard catalogue numbers and were getting some specialty numbers.

Q. In 1929 your purchases were $5,402.00, a very marked drop. How do you account for that? 2978
A. At that time we were handling practically just such items as were of special character for special account.

Q. That is, you were not handling substantial quantities of shelf goods or catalogue products? A. No, not so much.

Q. Then, your increase in 1930 or 1931 would be due to your increase in your industrials? Is that correct? A. Yes.

Q. Was there any dissatisfaction on your part with respect to the manner in which Mr. McCoy solicited your business over that period of time? 2979
A. No.

Q. Could you give an estimate at the present time as to how your purchases are divided as between the different manufacturers—the percentage? You testified you were buying more from Bryant Electric than anybody else. How much would you say you were buying from Bryant Electric—what percentage? A. Do you want H. & H. and Arrow as one or as units?

Q. You can separate them. A. C. & S. didn't amount to $100.00 so we will leave that out. It would be on the basis of about 40 per cent Bryant,

2980 30 per cent H. & H., 20 per cent. Arrow and 10 per cent Cutler-Hammer.

Q. 30 per cent H. & H. would include this specialty business? A. Yes, I have included that. That is on the basis of our total wiring devices purchases.

Q. Would you say that percentage in that relative proportion would run for the last year or two, or about how far back? A. It would cover last year, but the percentage would be different for the year prior.

2981 Q. It would be different for 1929? A. Yes.

Q. And 1928 also, I assume? A. Yes.

Q. If you should take out the specialty business which is not catalogued or on the shelf for H. & H. for 1931, what would be the percentage of H. & H.? A. Arrow would remain practically the same and H. & H. would show a considerable decline.

RECROSS EXAMINATION BY MR. BROWN:

Q. Mr. Brown, when you spoke in 1931 of most of your H. & H. goods being specials, it is true, is it not, that the H. & H. salesmen solicit you and ask you to buy H. & H. shelf goods as well as specials? A. Yes.

2982 Q. Why is Bryant your major line today? Why do you buy Bryant as your chief line? What are the considerations that lead you to do that?

Mr. Haycraft: I have no objection as far as I am concerned unless the witness has some objections.

Q. Let me put it this way—perhaps I can save you: Is it not true you favor Bryant now because you find a greater demand for it in the field? A. They have more complete line is one reason. They have a more complete line than Arrow or C. & S.

There are more items we can purchase from Bryant than any other. There are several items, specialty items, small items, not sold frequently but once in a while and if we have contact with them, we have access to those items at jobber's price without buying them from another jobber. 2983

Q. Do you have considerable demand from the field—and by the field I mean the ultimate consumer, the contractor or specifyer in general—do you have considerable demand from that class of people for Bryant goods? A. We don't in our business. It may apply to a jobber handling industrial accounts to a certain extent, but in our business with contractors and dealers one name is just a by-word as well as another. In our trade "Arrow" probably is a little better known than the name of "Bryant." 2984

Q. In the Bryant material that you buy do you also have special appliance goods? A. Yes, to the same firm we are selling some H. & H. items to.

Q. Is the special appliance business you have with Bryant pretty substantial? A. Yes.

BY MR. HAYCRAFT:

Q. Is it true to say, so far as shelf goods and catalogue items are concerned, that the Arrow line is the largest line you handle still? A. No, we have more Bryant than Arrow. 2985

Q. I mean outside of specialties? A. Yes.

Q. Has the personality of any of the employees of any of these respective organizations had anything to do with the changes you have made? A. Yes.

Q. And will you explain? A. I prefer not.

(Witness excused.)

2986 *Homer D. Sommer—Direct.*

HOMER D. SOMMER was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Will you state your full name and address and occupation? A. Homer D. Sommer, manager of the Youngstown Branch of the Moock Electric Supply Company.

Q. Where is the principal office of that concern located? A. Canton, Ohio.

2987

Q. In what business is it engaged? A. Distributors of electrical supplies and radio.

Q. How long have you been manager of the Youngstown Division? A. Approximately five years.

Q. How long have you been with that concern in some capacity? A. Ten and one-half years.

Q. Do you include in your items wiring devices? A. Yes, sir.

Q. From what manufacturers do you purchase wiring devices? A. Hart & Hegeman, Harvey Hubbell and Bryant.

2988

Q. What salesman of Hart & Hegeman calls upon you soliciting business of that concern? A. Mr. Whitten as I recall.

Q. How long has he represented the Hart & Hegeman line? A. Probably a year and a half.

Q. And prior to that who preceded him? A. Graves.

Q. For how long a period of time? A. Graves probably represented the company eight or nine years.

Q. Did Mr. Whitten or Mr. Graves do any missionary work for the Hart & Hegeman Manufactur-

2989

ing Company among the customers? A. Mr. Graves did but to the best of my knowledge Mr. Whitten has not done anything.

Q. So far as you know, has there been any change in the organization of the Hart & Hegeman concern during the period of time you have been buying from it? A. Yes, there is. I know of the consolidation of the Arrow Electric Company.

Q. About how long ago? A. I would say around about two years. A year and a half ago it became public property.

Q. And are you acquainted with a Mr. Sayre? A. Yes.

2990

Q. Who is he? A. He is their industrial man. He calls on industrials exclusively.

Q. Representing whom? A. Both Hart & Hegeman and Arrow.

Q. In your territory? A. Yes.

Q. Since October, 1927, has the Arrow Electric Company or the Arrow Division of the Arrow-Hart & Hegeman Company solicited business from you? A. That is the Arrow Company?

Q. Yes. A. No. In fact, I don't recall any solicitation since I have been in Youngstown from the Arrow Company.

2991

CROSS EXAMINATION BY MR. BROWN:

Q. Mr. Sommer, what supplies did you say you handle? A. Whose manufacture?

Q. What is your business? A. Electrical distributors—electrical appliances.

Q. All sorts of electrical wiring devices? A. Yes.

Q. What else? A. Refrigerators, radios—are exclusive distributors.

2992 Q. When you spoke of Mr. Sayre a moment ago, how did you get your knowledge about Mr. Sayre? A. You mean representing both companies?

Q. As to what he does and all that? A. As to his duties, you mean?

Q. Yes. A. Well, on the installations that we have or applications of their merchandise he would work with us, and he would also work with our competitor.

Q. On special appliances? A. No, that would be special switches for the industrials would be where that would come in.

2993 Q. Not shelf goods? A. No.

Q. So far as you know, Mr. Sayre has nothing to do with the shelf goods? A. No, I don't think he has anything to do with that.

Q. Do you have anything to add, Mr. Sommer, to the statement you have already made? A. If we have any special item that they make that applies to what we call industrials where they use it in the manufacture of some of their merchandise, Mr. Sayre works with us. He has nothing whatsoever to do with the dealer and the distributor any more than cooperating with him with the industrial.

2994 Q. When orders are obtained from these industrials for special appliances to go on their devices, are they placed directly or through your organization? A. When we work with them naturally the order goes through us. I haven't any records of it going otherwise.

(Witness excused.)

Examiner Reeves: The hearing will be adjourned until one o'clock Eastern Standard Time.

(Whereupon at 12:25 Eastern Standard Time, the hearing was adjourned until 1:00 o'clock p. m. Eastern Standard Time.)

AFTERNOON SESSION.

JAMES J. McCOY was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. State your name, residence and occupation. A. James J. McCoy, 29 Cedricton Street, Pittsburgh, Pa. Salesman.

Q. Are you employed at the present time? A. No, sir. 2996

Q. Were you ever in the employ of the Arrow Electric Company? A. Yes, sir.

Q. When? A. I believe it was from July 1, 1919 until July 1st of this year—1931.

Q. During that period of time did the Arrow Electric Company change its form of organization? A. The Arrow Electric Company merged with the Hart & Hegeman Company.

Q. About what time so far as you know? A. I don't know the exact date. It was two or three years ago.

Q. At the present time—July 1, 1931—was the Arrow Electric Company a division of the Arrow- 2997
Hart & Hegeman Company? A. It was the Arrow Electric Division of the Arrow-Hart & Hegeman Electric Company.

Q. Prior to 1919 what was your occupation? A. Well, I was in the army for about a year and a half prior to joining with the Arrow Electric Company. Well, about two months prior to going with Arrow I was with the General Electric Supply Company. It was then called the Union Electric Company in Pittsburgh. Prior to that I was in the army.

2998

Q. During the period of time, 1919 up to July, 1931, what were your duties as salesman? A. Well, I represented the Arrow Electric Company in the Pittsburgh territory, which comprises West Virginia and Western Pennsylvania. It was my duty to sell wiring devices to the jobbers and to the contractors through the jobbers and manufacturers through the jobbers.

Q. Prior to October, 1927, who was your superior officer? To whom did you report? A. I have always reported to A. P. Deacon up until July of last year.

2999

Q. July, 1930? A. Yes, July, 1930.

Q. Where did he have his office? A. New York City.

Q. What happened July, 1930, so far as you were concerned and your superior? A. I was notified that effective July 1st, I believe it was—I couldn't swear to that but I am pretty sure—that I would work out of the Philadelphia office instead of the New York office.

Q. Who would be your superior after that? A. J. W. Alexander.

Q. Who was he prior to that time? Do you know what he did before he was made your superior? A.

3000

He was in Philadelphia with the Arrow-Hart & Hegeman Company. I don't know what he did.

Q. He is now the district manager in Philadelphia? A. So far as I know. At least he was up to July 1st.

Q. In soliciting business from a jobber, how would you write up their orders? Did you have certain blanks you had to fill out or did you require the jobber to fill the orders out? A. Ordinarily the jobbers had a form which they gave you, an order form. With some jobbers I just jotted it down on a memorandum pad and when I would

get down to the office I would write it up in an order book which I had at the office. Most of them, though, had a regular order form.

Q. Did any customer of yours ever attempt to place an order with you for H. & H. products? A. I have had some customers ask me if I could take orders for H. & H. material and I told them no.

Q. What would you do under those circumstances? A. If a customer wanted to give me an order for any H. & H. material, I would tell them I couldn't take it.

Q. As a matter of fact, what would you do in a 3002
case of that kind? A. I would attempt to sell them Arrow material.

Q. If you found out you couldn't sell them Arrow material and they still wanted H. & H. material, what would you do? A. There was nothing I could do except tell them to get in touch with the H. & H. man.

Q. Did you ever assist them in bringing an order over to the H. & H. man? A. I believe one time the president of one concern asked me if I was going to see the H. & H. representative that afternoon. I told him I thought I would see him sometime between four and five o'clock. While he 3003
didn't give me a formal order, he gave me a piece of paper with two orders on it and I turned it over to the H. & H. representative that night to send it in.

Q. Among your customers did you have the Doubleday Hill Electric Company? A. Yes, sir.

Q. Are you acquainted with Mr. Lang, the purchasing agent there? A. Yes, sir.

Q. Did you ever accommodate him in such a manner as you have described? A. No, sir.

3004 *James J. McCoy—Direct.*

Q. Are you positive of that? A. I am pretty positive, yes, sir.

Q. What arrangement did you have with him with respect to the submission of Arrow orders to the Arrow-Hart & Hegeman Electric Company? A. What arrangements did I have?

Q. Yes. A. With reference to what?

Q. With Mr. Lang with reference to the sending or submitting of orders that were not submitted direct through you? A. Mr. Lang had been in the habit of sending orders to Philadelphia if I wasn't
3005 there to get them. Any order I asked Mr. Lang to send direct to me he would send to Pittsburgh.

Q. Can you identify this paper? A. Yes, sir.

Q. What is it? A. Why, it is an envelope that I always send my correspondence and orders direct to Philadelphia.

Q. And did you furnish Mr. Lang with a supply of these? A. No, sir.

Q. I ask you to look at this closer and see if this is the envelope you used. A. That is exactly the same kind of envelope I used in sending my correspondence and orders into the Philadelphia office.

3006

Mr. Haycraft: I offer that in evidence.

Mr. Brown: No objection.

Examiner Reeves: The envelope identified by the witness will be received in evidence as Commission's Exhibit No. 100.

(The envelope referred to was received in evidence and was marked Commission's Exhibit 100.)

Q. Do you know whether or not, as a matter of fact, Mr. Lang of the Doubleday Hill Electric

Company has a supply of those envelopes for his use? A. Mr. Lang showed me some of those down at his office one day some month or two months ago.

Q. I believe you said a moment ago you are not now employed by the Arrow Electric Division of the Arrow-Hart & Hegeman Electric Company? A. Yes, sir.

Q. When did your employment cease? A. July 1st of this year,—1931.

Q. Was that the first notice you had that your services were no longer required? A. No, not the exact date. The Saturday prior to July 1st I was called to Philadelphia—whatever date that was. 3008

Q. Had there been any complaints from your superior as to the way in which you had been conducting your affairs for the company? A. No, he hadn't made any complaints to me.

Q. Was any reason assigned for your discharge? A. I was called to Philadelphia and Mr. Alexander informed me that he had been at Hartford all week and the Hartford office had decided to dispense with the services of several of the men and that I was among this number.

Q. Nothing was said about the showing that you had been making in your work? A. He told me that the factory had been analyzing conditions all over the territory. 3009

Q. Was that the only explanation you had? A. That was all.

Q. Did you do anything further in determining the reason for your discharge? A. Well, I wrote a letter to Mr. Harvey Pond, the general sales manager.

Q. Did you receive any additional reasons? A. Mr. Pond replied to my letter stating that Hart-

3010 *James J. McCoy—Cross.*

ford had not made any recommendations whatever as to who was to be laid off, just expenses were to be cut by the managers, and Mr. Alexander evidently thought he could cut expenses in the western end of the territory, which was Pittsburgh, and Mr. Pond told me he couldn't do anything for me.

CROSS EXAMINATION BY MR. BROWN:

Q. On this Exhibit 100, Mr. McCoy, this isn't an envelope that was furnished to you by the Arrow-Hart & Hegeman Electric Company, is it?

3011 A. Mr. Alexander furnished that to me.

Q. When you say you used this envelope you testified, of course, that you were salesman for Arrow Division? A. Yes, sir.

Q. This envelope has up in the corner "H. & H. Division." Did you read that? A. Yes, sir.

Q. Well, did you have any with "Arrow Electric Division?" A. No, sir.

Q. As a matter of fact, it was immaterial when you were reporting to your own immediate superior what kind of an envelope you used, was it not? A. Well, he sent me those envelopes, sir, and he told me to use them in sending mail.

3012 Q. Did you use this altogether or did you have— A. (Interrupting) Those are the envelopes I used in sending to Philadelphia.

Q. What I mean to say is did you have any envelopes at any time with "Arrow Division" on them? A. No, I didn't have any with "Arrow Division" on them. That is, after July 1st. Prior to July 1st I did.

BY MR. HAYCRAFT:

Q. What year? A. July 1st this last year I had envelopes with "Arrow Division." I had my own envelopes prior to that.

BY MR. BROWN:

Q. That was July, 1930? A. Yes, when I come under Mr. Alexander's division. He sent me those envelopes.

Q. Didn't Mr. Alexander tell you he had run out of the Arrow Division and sent you these for a substitute? A. Yes, I wrote for a supply of stationery—envelopes—and he sent a letter back stating he didn't have any supply of Arrow Electric envelopes but to use these until such a time as he would have Arrow Division.

3014

Q. Of course, the envelopes you used were between you and your superior—mailed from you to your immediate superior? A. That is right.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. When was it you wrote Mr. Alexander for a supply of stationery? A. Shortly after I left Mr. Deacon's supervision. I don't know. I would say it may have been two months after I ran out of envelopes. At that time I had envelopes with the Arrow Electric Division's name on it. I wrote Mr. Alexander I would say maybe two or three months after that for envelopes.

3015

Q. You would probably fix it along on the fall, September or October, of 1930? A. I would say something like that.

Q. Did he send you a quantity? A. No, he would possibly send me maybe twenty or thirty—something like that.

Q. And then send more later on? A. When I would write him for more envelopes.

Q. Did Mr. Alexander visit this territory? A. Yes, Mr. Alexander was down here several times in the last year.

3016 *James J. McCoy—Redirect.*

Q. What was he doing? A. Well, he came one time, as I recall last November, to attend a jobbers convention, wholesale jobbers convention, and various other times he came to call on the different distributors.

Q. Did he go around with you calling on the customers? A. Well, I have been with him once or twice—not all the time.

Q. In calling on the trade? A. Yes.

Q. Mr. McCoy, did you appear here today pursuant to subpoena served upon you by the Federal
3017 Trade Commission? A. Yes, sir.

(Witness excused.)

Mr. Haycraft: Mr. Examiner, although I had another witness subpoenaed to appear at the hearing in Pittsburgh, I find he had left the city before the subpoena arrived and will probably be gone three or four weeks, and I find there is no one in his organization to take his place and it is necessary to go on without him. Therefore, I wish to ask for an adjournment at this time until nine o'clock Central Standard Time in Chicago, Illinois, on July
3018 24th.

Examiner Reeves: The hearing will be adjourned to Friday, July 24, 1931, at 10:00 o'clock A. M. Daylight Saving Time to reconvene in Suite 2246 of the Transportation Building, located at 608 South Dearborn Street, Chicago, Illinois.

(Whereupon, at 1:35 P. M. Eastern Standard Time, July 22, 1931, the hearing in the above entitled matter was adjourned to Chicago, Illinois, Suite 2246 of the Transportation Building, at 10:00 o'clock A. M. Daylight Saving Time.)

Room 2246, Transportation Building, 3019
608 South Dearborn Street, Chicago, Illinois.

July 24, 1931.

Met pursuant to adjournment taken at Pittsburgh, Pennsylvania, on July 22, 1931.

Before—WILLIAM C. REEVES, *Examiner*.

APPEARANCES:

E. H. HAYCRAFT, Attorney for the Federal Trade Commission. 3020

GROSS, HYDE & WILLIAMS, by WALLACE W. BROWN, 49 Pearl Street, Hartford, Conn. For the Respondents, Arrow-Hart & Hegeman, Inc., and The Arrow-Hart & Hegeman Electric Company.

PROCEEDINGS.

Examiner Reeves: We will proceed in the matter of No. 1498, pursuant to an adjournment taken in Pittsburgh, on July 22, 1931. 3021

Mr. Haycraft: I will call Mr. P. W. Greene.

3022 *P. W. Greene—Direct.*

P. W. GREENE was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. State your full name and your occupation? A. P. W. Greene, Middle States Electric Company; president and treasurer.

Q. Where do you live? A. Winnetka, Illinois.

Q. How long have you been president of the Middle States Electric Company? A. Since 1920.

3023 Q. What is the nature of the business conducted? A. Wholesale electrical supplies.

Q. Do you handle electric wiring devices? A. Yes, sir.

Q. What brands? A. Bryant.

Examiner Reeves: I didn't hear that.

BY MR. HAYCRAFT:

Q. What brand? A. Bryant, Hubbell, Pass & Seymour, Arrow, Hart-Hegeman.

Q. How long have you handled the Arrow brand?

3024 A. About six years.

Q. How long have you handled the Hart-Hegeman? A. Approximately three years.

Q. When you began to handle the Arrow brand, from whom did you purchase it? A. The Arrow Electric Company.

Mr. Brown: I am sorry, I didn't hear the question.

(Question read.)

Mr. Brown: The answer is what?

(Answer read.)

BY MR. HAYCRAFT:

Q. Located where? A. Well, we bought them from their agent, their agency, which is located above our store, 560 West Monroe Street.

Q. They had a warehouse there? A. Yes, sir.

Q. Who was in charge of their branch? A. Mr. Wildauer.

Q. Do you know his initials? A. No, I don't.

Q. From whom did you purchase Hart & Hegeman items? A. From their branch here, I don't know where it was located.

Q. Who was in charge? A. That I don't know. 3026

Q. Do you recall what salesmen called on you? A. No, sir.

Q. From whom are you buying Arrow items today? A. The Arrow division.

Q. The Arrow division of what firm? A. The Arrow-Hart & Hegeman Electric Company, I think.

Q. Where is it now located? A. On Jackson Boulevard.

Q. Do you know the number; 701 Jackson Boulevard? A. 701 Jackson Boulevard.

Q. Who is in charge of that division at the present time? A. Mr. Wildauer.

Q. From whom do you purchase your Hart & 3027
Hegeman items at the present time? A. The Hart & Hegeman division of the Hart-Hegeman and Arrow.

Q. Where is it located? A. 701.

Q. The same address? A. The same address.

Mr. Brown: If your Honor please, at this time I urge the same objections I made in Pittsburgh, to this jobber's testimony. I believe that it is on the same character that the government

3028 *P. W. Greene—Direct.*

took on its direct examination, directed to the same identical points; and my reasons for objecting are those stated at the Pittsburgh hearing, it is just a matter of inconvenience and expense of this rebuttal.

Examiner Reeves: What is the contention of counsel for the Commission as to whether this is rebuttal?

Mr. Haycraft: The same contention that I made in Pittsburgh, it is rebutting the testimony of the defense.

3029 Examiner Reeves: The objection will be overruled.

Mr. Brown: May I have an exception?

Examiner Reeves: Yes.

Mr. Brown: May that objection and exception stand for all this general line of testimony?

Examiner Reeves: It will be so ordered in the record.

Mr. Brown: Thank you.

BY MR. HAYCRAFT:

3030 Q. What method or procedure do you follow at the present time in ordering Arrow or Hart & Hegeman articles from the local office? A. Well, the purchasing department calls either the Arrow Company or the Hart & Hegeman Company, depending on what they want to order.

Q. Do you know how they call those places, that is, whether it is the same 'phone number? A. No, I don't.

Q. Do you know whether or not they have a common office or warehouse located in Chicago? A. No.

Q. Does your firm operate salesmen, traveling salesmen, out of your office? A. Yes, sir.

Q. How many? A. Six.

Q. What samples do they—do they carry samples of wiring devices? A. Occasionally they do; yes, sir.

Q. What samples do they carry? A. Whatever we happen to want to push at the time. Anything new that comes in, we usually give the salesmen a sample of it and let him take it out and show it to the customers.

Q. What lines do you push as a general proposition? 3032 A. You mean in wiring devices?

Q. In wiring devices; yes, sir. A. Ordinarily we push the Bryant.

Q. Well, between the Arrow and the Hart & Hegeman line; which line would you push? A. Well, if Arrow came out with something new, with a new item, we give the salesmen a sample of that.

Q. Do they have traveling salesmen who act as missionary men in securing orders from your customers? A. I believe they do.

Q. How much is that business carried on? A. Occasionally we receive an order from one of our customers which might have been given to the Arrow salesman, or again to the Arrow Company, and 3033 it is turned over to us, and we ship it and bill it.

Q. How do you place an order for it and how is the order filled? A. Well, if it is a single item, it is filled from stock; if it happens to be a pick-up, it goes through the regular procedure of the purchasing department.

Q. The regular procedure of the purchasing department would be what? A. If it would be an Arrow item, they would call up the Arrow; if it was Hart & Hegeman, they would call up Hart & Hegeman.

Q. Would delivery be made by the manufacturer? A. Our trucks would pick up the article.

Q. And they make the delivery? A. Yes, sir.

Q. Are orders ever given to the salesmen of either these two divisions? A. Not that I know of; they might be. Ordinarily we order by 'phone.

Q. Are you acquainted with Mr. Wildauer? A. Yes, sir.

Q. Did he at one time represent the Arrow Company? A. I believe so.

Q. And then the Arrow division. What is his
3035 status now; in what capacity does he call on you at the present time? A. Will you repeat that?

Q. In what capacity does he call on you at the present time? A. He usually calls on me just as a friend at the present time. I can't recall any business calls that he has made lately.

Q. Do you know what his official position is with the organization? A. Why, I understand he is manager of the Arrow-Hart & Hegeman Company in Chicago.

Q. Do you know how long the both divisions have had their office and warehouse at 701 Jackson Boulevard? A. I think since either February or March of this year.

3036 Q. And since that time has your firm had occation to place an order for one brand and have it filled with another? A. I don't know.

Q. Place an order for Arrow, for instance, and have it filled with Hart & Hegeman? A. That I couldn't tell.

Q. Who in your organization would be able to answer? A. Mr. Stanley.

Q. Is it possible to have Mr. Stanley come over here within the next half hour? A. Not very well.

3037

Q. That is, upon your return to the office? A. Well, it might be possible; it would be quite inconvenient.

Mr. Haycraft: I think that is all from this witness.

CROSS EXAMINATION BY MR. BROWN:

Q. Mr. Greene, it is true, is it not, that H. & H. salesmen and Arrow salesmen solicit business from you regularly, each for their own company? A. I 3038
believe they do; yes, sir. They call on us.

Mr. Brown: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. When you say they call on you; do you mean by that that they come in and ask you to give them an order for certain items, or what do you mean by your answer? A. Maybe I had better explain. As I told you; all our business is practically transacted over the telephone; and salesmen from the manufacturers come into our place more or less 3039
as missionary men. I can't recall any of them, of our regular suppliers, asking for an order. They come in to keep up the contact. We have the Arrow men come in to see us; and the Hart & Hegeman men come in to see us.

Q. Do you have your own salesmen pushing those goods? A. Yes, sir.

Mr. Haycraft: That is all.

3040 *P. W. Greene—Recross.*
P. W. Greene—Redirect.

RECROSS EXAMINATION BY MR. BROWN:

Q. Mr. Greene, the reason a salesman comes in, whether he is the H. & H. salesman, the Arrow salesman, the Bryant salesman, or the P. & S. salesman, is to convince you that you should handle his particular line, is that not so? A. I realize that; yes.

Q. That salesman is not particularly concerned whether you place that order with him or whether you 'phone it in to his home office? A. No, sir.

3041 Q. When you say the H. & H. salesman and the Arrow salesman have been soliciting business from you, or trying to induce you to carry their particular lines; that has been true for years, has it not? A. Ever since we have had the line; yes, sir.

Q. That is just as true today as ever? A. Yes, sir.

Mr. Brown: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Has it been true, Mr. Greene, during the
3042 years, that these two salesmen worked for the same man? A. During the years?

Q. Yes, how long has that been true? A. You mean, since the divisions have gone together?

Q. Yes. A. Yes, the same men have worked together.

Q. I say; have those two salesmen always worked for one sales-manager in Chicago? A. Have they?

Q. Yes. A. No, not that I know of.

Q. How long has it been true that the Arrow salesman and the Hart & Hegeman salesman have

worked for the same division manager in Chicago? A. Since February.

Q. To your knowledge? A. Yes, sir.

Q. Before that time you don't know whether they worked under Mr. Lubeck? A. I assume the H. & H. salesman worked there.

Q. The Arrow salesman worked for Mr. Wildauer? A. Yes, sir.

Q. In other words, prior to last February the Arrow Company's man was responsible to Mr. Wildauer, and the Hart & Hegeman salesman was responsible to Mr. Lubeck? A. I presume so; yes, sir. 3044

Q. And since February they have worked under the supervision of Mr. Wildauer? A. Yes, sir.

Mr. Haycraft: That is all.

Mr. Brown: That is all.

(Witness excused.)

CHARLES GEORGE YUNDT was thereupon called as a witness, and having been first duly sworn, testified as follows:

BY MR. HAYCRAFT: 3045

Q. State your full name? A. Charles George Yundt.

Q. Your address; where do you live? A. 1146 South Cuyler Avenue. Oak Park, Illinois, that is.

Q. Your occupation? A. Vice President and sales manager.

Q. Of what firm? A. Kubec Electric Company.

Q. Where is it located? A. 628 West Monroe Street.

Q. How long have you occupied that position, Mr. Yundt? A. Well, I don't know exactly, but I would say I have been vice president about five years.

Q. What products does your firm handle? A. Electrical supplies.

Q. Does that include electric wiring devices? A. Yes, sir.

Q. And what brands of electric wiring devices do you handle? A. Hart & Hegeman, Hubbell, Arrow, Pass & Seymour, Cutler-Hammer.

3047 Q. Do you stock all those brands? A. No, sir.

Q. What brands do you carry in stock? A. We attempt to carry in stock Hart & Hegeman and Cutler-Hammer.

Q. How long have you been buying Hart & Hegeman? A. Since January, 1925.

Q. And from whom did you purchase them at that time? A. I would like to have that question—to me personally?

Q. No, no. Where did you buy them, here in Chicago? A. We bought them through Chicago, the Chicago office.

Q. Of the Hart & Hegeman Electric Company, the manufacturer? A. Hart & Hegeman? I don't
3048 know; there is two names; one is "electric" and the other is "manufacturing" company; but it is the Chicago branch that we purchased from.

Q. Who was in charge at that time? A. Mr. Lubeck.

Q. Where was that branch located? A. 625 West Monroe Street, right across the street from our company.

Q. How long did you continue buying from Mr. Lubeck at that address? A. Until he was transferred to Detroit, which was back about the early part of March, if I recall right.

Q. Of this year? A. Yes, sir; of this year.

Q. And at the time that he was transferred, was it still the Hart & Hegeman Manufacturing Company, or had there been a change in its organization? A. Well, we always bought direct from Hart & Hegeman up to that time.

Q. Then after that, what did you do? A. Well, I can't answer that except in this way: that we have our buyer—whenever I called the Hart & Hegeman I asked the telephone operator to get a certain party. If I wanted somebody over at the Arrow Electric Company, I asked for that certain party at the Arrow Electric Company. 3050

Q. How long have you bought Arrow products? A. Since July, 1927.

Q. Where were they located at that time? A. I believe they were located on Monroe street.

Q. Did they have a warehouse? A. They had a warehouse, yes.

Q. And did they make deliveries from that warehouse, or did you get the goods yourself? A. What little we purchased from them, we picked up ourselves.

Q. About how long did you buy—who was in charge of that branch of the Arrow Company? A. Mr. Wildauer. 3051

Q. How long did you continue to buy from him at that address? A. Well, we bought from them until they consolidated their warehouse, in the early part of this year.

Q. And where did they consolidate; where are they now? A. Over at 701 West Jackson Boulevard.

Q. And how are your orders placed as a general thing? Do you place them with the salesmen or do you telephone them in? A. Most of the time over

the telephone; and they were confirmed by confirming letter.

Q. That you sent through the mail? A. That we mailed; yes, sir.

Q. Who is in charge of the consolidated office and warehouse of the two branches at the present time? A. I understand Mr. Wildauer is manager of this territory.

Q. Had he called on you since that consolidation has taken place? A. He was in to see me here a couple of months ago, since they moved; yes, sir.

3053 Q. Do they employ missionary salesmen to solicit business from your customers, orders from your customers, for you? A. I can answer that this way: they have been soliciting orders from our customers and brought them in and we filled the orders with Arrow merchandise or Hart & Hegeman merchandise, depending upon whether it was the missionary man of one or the other.

Q. And would they always fill orders out of stock? I suppose you filled them out of stock when you could, but what would you do when you didn't have them in stock? A. I would say this: on Hart & Hegeman the chances are they would be filled out of stock; and on the Arrow practically always they

3054 would be picked up.

Q. Because you didn't carry them in stock? A. Because we don't carry the Arrow line.

Q. Do you have traveling salesmen? A. Yes, sir.

Q. What electrical wiring devices out of these lines do they push; what do they push in their calls on the trade? A. Hart & Hegeman and Cutler-Hammer are the only ones that we have pushed.

Q. Do they carry samples and catalogues of those two? A. Yes, sir.

Q. But you don't carry samples or catalogues of the Arrow? A. No, sir.

Q. Do you know whether or not these two divisions, the Arrow and the Hart & Hegeman divisions, have separate offices at that address, or do you know anything about their office arrangement? A. I haven't been over there, but I understand that they are all together on the second floor of the building over there.

Q. Do you know anything about their telephone number? A. I happened to check up here just this morning and found the telephone number was the same at the present time, but formerly, before they consolidated their warehouses, I know they were different numbers. 3056

Q. You know they were different numbers before that; that is, before March of this year? A. Yes.

Mr. Haycraft: I think that is all.

Examiner Reeves: Cross examine.

CROSS EXAMINATION BY MR. BROWN:

Q. Mr. Yundt, do both Arrow salesmen and H. & H. salesmen call on you regularly now? A. Yes, sir.

Q. Each soliciting for his own division? A. Yes, sir. 3057

Q. Has the Arrow salesman and the H. & H. salesman solicited your business in that fashion for years? A. Well, they both solicited it, I would say, pretty near from the start that they sold us.

Q. And there has been no abatement in the vigor of the solicitation by either division, has there? A. No, they have been continuing to call on me as in the past.

Mr. Brown: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Why didn't you stock the Arrow line if their salesman has been calling on you all this time? A. Well, we felt that from an economic standpoint that it was not good policy to carry duplicate lines of merchandise in our stock.

Q. In other words, the Arrow and the Hart & Hegeman are the same? A. Well, they had a good many items that were practically the same material.

3059 Q. In other words, the only Arrow business that you handle is what orders come to you from their missionary man? A. Yes, sir; and whatever orders our customers may have requested from time to time, and insisted on Arrow merchandise.

Mr. Haycraft: That is all.

RECROSS EXAMINATION BY MR. BROWN:

Q. Mr. Yundt, it is also true, isn't it, that Bryant has a very similar line to Arrow or H. & H.? A. Yes, sir.

Q. The same thing is true of the General Electric? A. Yes, sir.

3060 Q. And Weber? A. Yes, sir.

Q. And Hubbell? A. Yes, sir.

Q. The reason you don't stock Hubbell or Bryant or G. E. is for the same reason that you don't stock Arrow; is that so? A. I would say with this exception; I don't believe that General Electric would sell us at the present time, or Bryant.

Q. But so far as Hubbell or Weber or Pass & Seymour are concerned, that would be true? A. That would be true; yes, sir.

Mr. Brown: That is all.

Charles George Yundt—Redirect. 3061
Charles George Yundt—Recross.
Charles George Yundt—Redirect.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Are the Hubbell or Pass & Seymour items made in the Hart & Hegeman factory? A. I couldn't answer that.

Q. Isn't there, as a matter of fact, a difference in the quality of the material? A. In which?

Q. In the Hubbell and Pass & Seymour, and the Hart & Hegeman? A. I would say there is.

Q. Isn't Hart & Hegeman superior? A. I have 3062
always felt in my own mind that they were superior.

Q. Isn't that another reason for pushing the Hart & Hegeman line and not the other? A. Well, the other good reason, I would say, it was the first high class line of wiring devices that the Kubec Electric Company handled.

Mr. Haycraft: That is all.

RECROSS EXAMINATION BY MR. BROWN:

Q. You still consider the H. & H. line the superior of all of the lines, don't you, Mr. Yundt? A. 3063
From our salesman's standpoint, we do.

Mr. Brown: That is all.

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. Is there any difference in the quality between the Arrow and the H. & H. at present? A. At present I imagine that they are about the same.

Q. There is no difference—you know they are the same, so far as quality is concerned, don't you? A.

3064 *Charles George Yundt—Redirect.*

I think I have seen some samples marked Arrow and Hart & Hegeman, that is about all I know. I saw that just recently.

Q. In other words, carrying both names? A. I have always felt this way; that the Hart & Hegeman switch was far superior to the Arrow switch.

Q. And was that true in the old days? A. I don't know, how it is today, but it always was that way, to my way of thinking.

Q. Do you sell any Arrow switches at the present time? A. No, sir; except where the customer in-
3065 sists on Arrow switches on their orders.

Q. What items have you seen with the Arrow and the Hart & Hegeman trade marks both stamped on them? A. I just happened to call to mind some new articles that they gave us some samples of here about three weeks ago. It was a heater plug, or a heater core. There may have been other items, but I don't just remember them; probably new receptacles, convenience outlets.

Q. Do your salesmen carry those samples around with them in an endeavor to push them? A. Yes, just lately I believe one of our men carried them around, because just before I went on my vacation
3066 I asked one of our men to carry those samples around to see if he could get any orders for that material.

Q. You don't know whether he got any orders or not? A. I couldn't answer that.

Q. Have you any idea how you would place an order for that material if you succeeded in placing a sale? A. Mr. Wick, our buyer, would call Hart & Hegeman, whom he has been doing business with, I presume.

Mr. Haycraft: That is all.

RECROSS EXAMINATION BY MR. BROWN:

Q. You only know, Mr. Yundt, of one such article which you have seen with the joint name? A. Well, that is all that I can recall.

Q. And you think that was an attachment plug? A. Heater plug, a heater plug switch, as I recall it. There might have been others, but I didn't see them.

Q. You don't know? A. I am not sure, I couldn't testify and say yes or no.

Q. No, Mr. Yundt, when it comes to the matter of quality, isn't it broadly true that as a matter 3068
of fact, not perhaps opinion in the trade, but as a matter of fact, from your knowledge of the jobbers, isn't it broadly true that the quality of H. & H. and Bryant and Pass & Seymour and Hubbell and General Electric are about on a par? A. They are considered that way among the trade.

Q. Now, in speaking of the superiority of the H. & H. line, your stocking of that line is pretty largely dependent upon your own customers who demand that line; isn't that true? A. Well, we worked up a trade which I believe the customers know, and that is our leading line, Hart & Hegeman.

Q. And your customers in the field, not so familiar with all lines as you are, still regard H. & H. 3069
as the superior line? A. I would say the largest percentage of our customers.

Q. Do so regard it? A. Regard Hart & Hegeman as the better line to purchase.

Q. That would naturally influence your decision to carry and push H. & H.? A. Yes, sir.

Mr. Brown: That is all.
Mr. Haycraft: That is all.
(Witness excused.)

3070 *Joseph Fink—Direct.*

JOSEPH FINK was thereupon called as a witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAYCRAFT:

Q. State your full name? A. Joseph Fink.

Q. Your residence? A. 2417 Lunt Avenue.

Q. Chicago? A. Chicago.

Q. Your occupation? A. President, Effengee Electric Supply Company.

3071 Q. Where does it have its place of business? A. 12 North Jefferson Street, Chicago.

Q. In what business is it engaged? A. Wholesale jobbers of electrical supplies and lighting fixtures.

Q. Included in that are electric wiring devices? A. Yes, sir.

Q. How long have you handled that line? A. I didn't get that question.

Q. How long have you been in business? A. Twelve years.

Q. What line of wiring devices do you handle? A. Arrow, Hart & Hegeman, Hubbell, Bryant. We also furnish G. E. on request, Cutler-Hammer on request and P. & S. on request.

3072 Q. What lines do you stock? A. Arrow, and a little of Hart & Hegeman, and Hubbell and a little of Bryant.

Q. Do you travel salesmen yourself? A. Yes, sir.

Q. What do they push? A. They push Arrow.

Q. And carry samples? A. Of certain items.

Q. What particular items? A. Well, mostly on their brass goods—I call them brass goods.

Q. How long have you purchased Arrow? A. About eight or nine years.

Q. And from whom did you first purchase it? A. Arrow Electric.

Q. Did they have a branch here? A. Yes, sir.

Q. And warehouse? A. Yes, sir.

Q. And who was in charge of that? A. Mr. Wildauer.

Q. How did you place your orders in those days? A. Mainly by 'phone.

Q. How long have you been handling Hart & Hegeman goods? A. I would say about five or six years.

Q. From whom did you purchase them? A. From 3074
Hart & Hegeman.

Q. Did they have a branch in Chicago? A. Yes, sir.

Q. During the past year has there been a merger of those two organizations, so far as you know? A. There has been, according to a letter sent out to the trade.

Q. Do you remember when that was? A. That is, there was a letter sent out. I received a letter; I really couldn't say when. I think it is about a year, though.

Q. About a year ago. What do you recall was the change which was made at that time? A. Mere- 3075
ly a merger between Arrow and Hart & Hegeman.

Q. What were the changes in Chicago pursuant to that, to your knowledge? A. I understand they moved under one roof.

Q. At 701 Jackson Boulevard? A. That is where they are located, I understand.

Q. Who is in charge there, to your knowledge? A. To the best of my knowledge Mr. Wildauer is in charge.

Q. How do you place orders at the present time for Arrow products? A. I don't place the orders,

3076 *Joseph Fink—Direct.*

but I understand that they are placed, when they want Arrow merchandise, that there is a certain party in the Arrow division called; and when they want Hart & Hegeman merchandise, there is a certain party in that division called.

Q. And how are deliveries made; do you go and get the goods, or do they deliver them at your place? A. Well, sometimes we pick them up; sometimes they are delivered; mostly delivered.

Q. Do they deliver them to your place of business? A. Yes, sir.

3077 Q. And they are then delivered from there by you to the buyer? A. Yes, sir.

Q. Have you ever had occasion to place an order for both products at the same time? A. I say, I don't place the orders.

Q. You don't recall; you don't know then? A. No, I don't know.

Q. How long have they been under one roof? A. How long have I?

Q. No, how long have they been under this one roof that you speak of? A. To the best of my knowledge, about six months.

Q. Did you know Mr. Wildauer before he was put in charge of both divisions? A. Yes, sir.

3078

Q. What business was he in charge of then? A. Arrow Electric.

Q. Who was in charge of the Hart & Hegeman before the consolidation? A. To the best of my knowledge, Mr. Lubeck.

Q. They have missionary salesmen who solicit your business? A. Do they?

Q. Yes. A. Yes, sir; they do.

Q. What procedure do they follow? That is, do they get business for you? A. Well, they just merely call on the trade, show their items and get their

friends to place orders, to go through whichever jobber or dealer he asks them to put it through.

Q. Is that the business of the Arrow that you handle, or do your salesmen get some Arrow business also? A. Oh, no; we get some Arrow business also.

Q. Your salesmen do not carry Arrow samples? A. Only just when a new item comes out.

Q. You heard the testimony of Mr. Yundt about the new items; could you give any experience along that line? A. I haven't paid any attention to it.

Q. You haven't seen any items which bore the trade marks of both? A. I don't know of seeing any. 3080

Q. Do you have furnished you by these various divisions sample cards, which contain samples of new material as they come out? A. Yes, sir.

Q. How are these cards printed; that is, what names are printed on them? A. I can't really answer that; I haven't paid much attention to it.

Q. You don't know about the new items that come out, how they are advertised? A. No, sir; I don't.

Mr. Haycraft: I think that is all.

CROSS EXAMINATION BY MR. BROWN: 3081

Q. Mr. Fink, H. & H. salesmen have been soliciting your business for years, have they not? A. They have; yes, sir.

Q. And the same thing is true of the Arrow salesmen? A. Yes, sir.

Q. And it is true today also? A. It is.

Q. The salesman for Arrow and the salesman for H. & H. solicit your business just as vigorously as they ever did? A. That is right.

Mr. Brown: I think that is all.

3082 *Joseph Fink—Redirect.*

REDIRECT EXAMINATION BY MR. HAYCRAFT:

Q. When you say solicit your business vigorously, what do you mean? A. I would say they have a salesman in regularly; either weekly or every second week. I don't get to see them all the time, because I am out quite a bit.

Q. Does he come in to take orders? A. If he is handed an order, he won't refuse it, but most buying is done over the telephone. All lines of wiring devices are pretty well established, and the jobbers
3083 —I imagine that most of the jobbers buy their material over the 'phone.

Q. What is the occasion of the salesmen calling, to bring in orders they have obtained? A. No.

Q. What do they do when they call? A. I imagine the same as any other salesmen, looking for business, keeping the good will of the company, keeping the friendship of the jobber.

Q. Who are the salesmen who call on you from them? A. Mr. Earhardt for the Arrow—I happen to remember the name; I didn't when I spoke before; and Mr. Leonard for the Hart & Hegeman.

Q. How long have they been representing these
3084 various divisions? A. Well, Mr. Leonard, to the best of my memory, has been with them about four years, maybe longer, maybe not that long, I don't remember——I mean Mr. Earhardt. Mr. Leonard, I only remember for about a year.

Q. They are now both working out of the same office? A. To the best of my knowledge.

Q. Since about last March? A. Yes.

Q. Before that time they worked out of separate offices? A. I understand they did.

Q. How does it happen that you don't stock the Arrow line? A. We do stock it; we stock both lines.

Q. You stock both lines? A. Yes, sir.

Q. I misunderstood you. What do you stock? A. We stock the faster moving items.

Q. Do you stock Hart & Hegeman items? A. Yes, we stock Hart & Hegeman items; we stock the faster moving items of Hart & Hegeman and we stock the slower moving items of Arrow and Hubbell.

Q. Your Arrow line is your principal line? A. The Arrow line and the Hubbell line are our principal lines.

3086

Mr. Haycraft: I think that is all.

Mr. Brown: May I ask another question?

Examiner Reeves: Yes.

RECROSS EXAMINATION BY MR. BROWN:

Q. Mr. Fink, in placing orders over the telephone for various merchandise, would you do that with respect to Hubbell goods or Bryant or Pass & Seymour or Weber? A. Yes, sir.

Q. You would do the same any way? A. Yes, sir.

Q. And the salesmen of Pass & Seymour and Hubbell and Bryant and Weber all solicit in about the same way? A. Yes, sir. 3087

Q. As Arrow solicits? A. Yes, sir.

Q. Or as H. & H. solicits? A. Yes, sir.

Mr. Brown: That is all.

(Witness excused.)

Mr. Haycraft: Gentlemen, that concludes the taking of testimony at this point, concludes the rebuttal for the Commission.

Mr. Brown: Your Honor, during the testimony of Mr. Yundt there was something said about a common brand. Mr. Cook, speaking

3088 off the record, explained to Mr. Haycraft that situation, and Mr. Haycraft said that Mr. Cook might clear up that situation, and has consented to have Mr. Cook take the stand and do that.

Examiner Reeves: Let the record show that Mr. John R. Cook, who was sworn and gave testimony at a previous session, is recalled by counsel for further examination.

3089 JOHN R. COOK was thereupon recalled as a witness, and having been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROWN:

Q. Mr. Cook, you heard Mr. Yundt's testimony with respect to a common brand, and it has been agreed that you clear up that situation for the record. Will you do that, please? A. Yes, Mr. Yundt testified that on the heater plugs, what we term an appliance line, which we have recently brought out, that the trade mark was the same,
3090 He undoubtedly was mistaken in this, because I have in front of me a sample of these heater plugs with the markings as they go out today; one being marked "Arrow" and the other being marked "H. & H.", to distinguish the brands.

BY MR. HAYCRAFT:

Q. The same item but different brands? A. The same item but different brands.

3091

Mr. Haycraft: Do you want to put them in as exhibits?

Mr. Brown: Well—

A. You may want to put them in your exhibits; I don't know whether we do or not. You can look at them and see the trade marks right there.

Mr. Brown: I don't believe, with that statement, that the exhibits are necessary, do you?

Mr. Haycraft: Not unless you want them in.

Mr. Brown: Mr. Yundt was probably confused by the fact that the articles were identical in appearance.

3092

The Witness: He probably was because the Arrow salesman and the Hart & Hegeman salesman solicited him on the device.

Mr. Brown: That is all.

CROSS EXAMINATION BY MR. HAYCRAFT:

Q. The two items mentioned in the previous testimony, there being some items that bore a common brand; what are those two items? A. A motor starting switch and the attachment.

3093

Examiner Reeves: Off the record—

(Discussion had out of the record.)

Mr. Brown: If your Honor please, Mr. Haycraft, as I understand, has already rested his case. Is that true, Mr. Haycraft?

Mr. Haycraft: Yes.

Mr. Brown: The respondent is prepared to rest its case. The main doubt about that is the matter of procedure. We understand we have the right to draw up our tentative findings, to submit to you.

3094 Examiner Reeves: Yes.

Mr. Brown: You know, Mr. Gross is in Europe, and will not be back until after Labor Day. Now, the rules, I think, call for a submission of the findings within ten days.

Examiner Reeves: Within ten days.

Mr. Brown: We would not be prepared to submit that finding within ten days because naturally Mr. Gross would want to pass on it. I would not want to take that responsibility. If that could be held, say, until September 15th or 20th, to submit that draft of finding; if that can be done under the rule—

3095 Mr. Haycraft: You talk to the Examiner; that is agreeable to me.

Examiner Reeves: Off the record—

(Discussion had off the record.)

Examiner Reeves: The taking of testimony is ordered closed. Upon the receipt of the stenographic report the Examiner will proceed with the preparation of his report upon the facts, pursuant to Rule 12 of the Rules of Practice and Procedure of the Commission. Copies of the report of the Examiner will be served upon counsel for the Commission and counsel for the respondent. The requirements

3096 of the Rules of Practice and Procedure of the Commision concerning the filing of suggestions and brief will be stated in the letter of transmittal accompanying the copies of the report of the Examiner, which will be served upon respective counsel.

Due to the size of the transcript of the testimony, and the large volume of documentary evidence, and the apparent complications of the issues, the Examiner on his own motion respectfully requests counsel for the Commission and counsel for the respondent each fur-

nish for the use of the Examiner a statement 3097
in writing on or before September 21, 1931, setting forth their respective contentions as to the facts proven, as authorized by the provision of said Rule 12.

Mr. Brown: Off the record—

(Discussion had out of the record.)

Mr. Haycraft: I can say for the record, so far as I am concerned, I shall comply with that request.

Mr. Brown: Also for the record, that I also will comply with that request.

Examiner Reeves: So far as I know, that is all.

Whereupon at 11:45 a. m., Friday, July 24, 3098
1931, the hearing in the above entitled matter was closed.

3099

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Petition to Review and Set Aside an Order of the Federal Trade Commission

PETITION TO REVIEW AND SET ASIDE ORDER—Filed Sept. 29, 1932

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes now The Arrow-Hart & Hegeman Electric Company, petitioner herein, and prays that this Court review and set aside a certain order heretofore entered against it by the Federal Trade Commission, and it respectfully represents and shows to the Court the following:

1. That it now is, and ever since December 31, 1928, has been, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, having its principal office and place of business in the Town and County of Hartford in said State, and being engaged in the business of manufacturing and selling electrical wiring devices.

2. That on or about October 10, 1927, there was incorporated under the laws of said State of Connecticut a corporation known as Arrow-Hart & Hegeman, Inc., which corporation was located in said Town of Hartford.

3. That said Arrow-Hart & Hegeman, Inc., immediately following its said incorporation, acquired all of the common capital stocks of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, two Connecticut corporations located in said town of Hartford,

each being engaged in the business of manufacturing and selling electrical wiring devices.

4. That thereafter, on or about March 3, 1928, the Federal Trade Commission, respondent herein, issued a complaint against said Arrow-Hart & Hegeman, Inc., alleging that it had violated Section 7 of an Act of Congress, approved October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," generally known as the "Clayton Act," in that the effect of the said acquisition of the stock of The Arrow Electric Company and The Hart and Hegeman Manufacturing Company by said Arrow-Hart & Hegeman, Inc., might be to lessen competition between said two companies, restrain commerce and tend to create a monopoly in the electrical wiring device industry.

5. That thereafter, on April 3, 1928, said Arrow-Hart & Hegeman, Inc. appeared before the Board of Review of said respondent, the Federal Trade Commission, and requested a dismissal of said complaint against it, which request on July 10, 1928, was denied.

6. That thereafter, on September 7, 1928, said Arrow-Hart & Hegeman, Inc. filed its answer to said complaint in which it denied all allegations to the effect that it had violated the said Clayton Act and in which it made, by way of further defense, certain affirmative allegations, among others that the acquisition of said common stocks by it neither had injured, nor would injure, the public, but, on the contrary, that such acquisition had been and would continue to be beneficial to the public, also that the purpose of the acquisition was not to lessen competition between the said two manufacturing companies but was solely to effectuate manufacturing economies, also, that the holding form of company, rather than a merger, had been specifically chosen with the express purpose and intent of maintaining the competition between the two operating companies as the best means of preserving the large proprietary values attaching to their respective brands; and that the effect and result of such acquisition accomplished that purpose.

7. That thereafter said Arrow-Hart & Hegeman, Inc., in order to meet the criticism of the respondent and thus to

terminate the pending litigation, but nevertheless without prejudice to its rights, believing it had not violated the Clayton Act as charged, distributed its assets, which consisted of said acquired common stocks, and voted to dissolve, its last corporate act being on December 10, 1928, when it filed a preliminary certificate of dissolution with the Secretary of the State of Connecticut and advertised notice thereof as required by law.

8. That thereafter, on December 31, 1928, your petitioner herein, The Arrow-Hart & Hegeman Electric Company, was formed by a merger, under the laws of the State of Connecticut, of said The Arrow Electric Company, said The Hart & Hegeman Manufacturing Company and two other Connecticut corporations located in said Hartford, namely, The Arrow Manufacturing Company and The H & H Electric Company, these latter two companies having been formed to acquire the common stocks of the other two companies solely to avoid possible heavy Federal taxation to its stockholders through liquidation of said Arrow-Hart & Hegeman, Inc.

9. That thereafter, on January 11, 1929, counsel notified the respondent that Arrow-Hart & Hegeman, Inc. had distributed its assets and had voted to dissolve; also that the merger hereinabove described had been effected.

10. That thereafter no objection was made nor was action of any kind taken, by the respondent until June 29, 1929, when it issued a supplemental complaint naming Arrow-Hart & Hegeman, Inc. and The Arrow-Hart & Hegeman Electric Company as joint respondents, this complaint alleging in substance that Section 7 of the said Clayton Act had been violated in the way hereinabove described by both companies; that the dissolution of Arrow-Hart & Hegeman, Inc. was of no force and effect in depriving the Commission of jurisdiction over it and also that the formation of The Arrow-Hart & Hegeman Electric Company was of no force and effect in depriving the Commission of its jurisdiction over the claimed violation of the Clayton Act.

11. That thereafter, on October 11, 1929, your petitioner, The Arrow-Hart & Hegeman Electric Company, appearing specially for the purpose, filed a motion with the Commission asking a dismissal of the original and supplemental

complaints upon the grounds that Arrow-Hart & Hegeman, Inc. had divested itself of the common stock of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, the holding of which was the subject of the Commission's original complaint; that said corporation was dissolved and out of existence, the final certificate of dissolution having been filed with, and approved by, the Secretary of the State of Connecticut on April 11, 1929, after any claimants against it, under the provisions of the law, had had full opportunity to press their claims; that for a period of some twenty-five days, namely from December 6, 1928, being the date upon which said divestment of stocks took place, until December 31, 1928, the date of the formation of The Arrow-Hart & Hegeman Electric Company, the said The Arrow Electric Company and The Hart & Hegeman Manufacturing Company were entirely independent of one another; that Arrow-Hart & Hegeman, Inc. did not use the common stocks of said The Arrow Electric Company and The Hart & Hegeman Manufacturing Company to effect the formation of The Arrow-Hart & Hegeman Electric Company; that said The Arrow-Hart & Hegeman Electric Company was not in law or in fact the legal successor of Arrow-Hart & Hegeman, Inc. and had never in any way violated any of the provisions of the said Clayton Act.

12. That thereafter, on said October 11, 1929, your petitioner in order fully to protect itself, but reserving at all times its right to object to the jurisdiction of the respondent over it, filed an answer to said supplemetnal complaint in which it adopted by reference the said answer to the original complaint, denied all allegations to the effect that either it or Arrow-Hart & Hegeman, Inc. had violated the provisions of said Section 7 of the Clayton Act, and by way of further defense, set up affirmatively the steps taken by said Arrow-Hart & Hegeman, Inc. in distributing its assets and dissolving, the steps taken to incorporate the said The Arrow Manufacturing Company and The H & H Electric Company, and the steps taken to incorporate your said petitioner, and also in which said answer it alleged that the purpose of the affiliation and later consolidation had not been to stamp out or lessen competition but had been to effect manufacturing economies, preserve the good will

attaching to the several brands, improve quality of product and lower prices the better to meet the strong competition in the industry, and that further prosecution by the Commission, instead of being an aid to competition, would only be a blow to the electrical wiring device industry as a whole and would work an injury to the consuming public and to the financial interests of many innocent stockholders.

13. That after the filing on said October 11, 1929, of the said motion to dismiss and the said answer (the motion to dismiss being summarily denied on December 15, 1930, without prejudice, however, to the raising of the questions involved at the final hearing) the respondent, the Federal Trade Commission, took no steps whatever to prosecute its action until May 25, 1931, when it commenced the taking of testimony and other evidence in the said Town of Hartford before its Trial Examiner, the Honorable William C. Reeves, appointed for that purpose by the said Commission.

14. That thereafter on June 17, 1931, at the conclusion of the Commission's case in chief, your petitioner made an oral motion largely in the nature of a motion for a non suit, specifying fully the grounds therefor, as will appear from the transcript of record hereafter to be filed by said Commission, but the said Trial Examiner refused to entertain said motion upon the ground that he lacked power or authority to do so, reserving it, however, for action by the said Commission at the final hearing.

15. That thereafter further testimony and other evidence was adduced and received before the said Trial Examiner in behalf of both your petitioner and the Commission, and on July 24, 1931, counsel for both of said parties formally rested.

16. That thereafter, on or about September 19, 1931, your petitioner, pursuant to the request of the said Trial Examiner directed both to its counsel and to counsel for the Commission, filed its written Contentions as to the Facts with him; counsel for the said Commission, however, filed none.

17. That thereafter, on September 28, 1931, the said Trial Examiner filed his Report upon the Facts with the Commission, a copy of which was served upon your petitioner.

18. That thereafter, on or about October 9, 1931, your petitioner, pursuant to the Commission's rules, filed with said Commission extended exceptions to the said Trial Examiner's Report upon the Facts; counsel for the Commission filed none.

19. That on March 21, 1932, a hearing was had and on July 6, 1932, the respondent filed its Findings as to the Facts and Conclusions and entered its order, which order, with the dissenting opinion, reads as follows:

"UNITED STATES OF AMERICA:

BEFORE FEDERAL TRADE COMMISSION

At a Regular Session of the Federal Trade Commission Held at its Office in the City of Washington, D. C., on the 6th Day of July, A. D. 1932

Commissioners:

William E. Humphrey, Chairman; Charles H. March, Edgar A. McCulloch, Garland S. Ferguson, Jr., C. W. Hunt.

"Docket 1498

"In the Matter of ARROW-HART & HEGEMAN, INCORPORATED, and THE ARROW-HART & HEGEMAN ELECTRIC CO.

"Order to Divest

"This proceeding having been heard by the Federal Trade Commission upon the complaint and supplemental complaint of the Commission, the answers of respondents, the testimony, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved October 15, 1914, entitled 'An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for Other Purposes' (the Clayton Act):

"Now therefore, it is ordered, that the said respondent, The Arrow-Hart & Hegeman Electric Company, forthwith cease and desist from violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914,

entitled 'An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for Other Purposes,' and within ninety (90) days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Company acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Company and Arrow Electric Company, The Arrow Manufacturing Company, and The H & H Electric Company on or about December 31, 1928, so as to include in such divestment the said Hart & Hegeman Manufacturing Company's manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of the said Hart & Hegeman Manufacturing Company; or within ninety (90) days from the date of the service upon it of a copy of this order divest itself absolutely, in good faith, of all the common stock of the said Arrow Electric Company acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Company, Arrow Electric Company, The Arrow Manufacturing Company, and The H & H Electric Company on or about December 31, 1928, so as to include in such divestment the said Arrow Electric Company's manufacturing plants and all other property necessary to the conduct and operation thereof as a complete going concern, and so as neither directly nor indirectly, to retain any of the fruits of the acquisition of the common stock of the said Arrow Electric Company.

"It is hereby further ordered that the said new respondent, The Arrow-Hart & Hegeman Electric Company, shall within ninety (90) days from the date of service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Hart & Hegeman's Manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern; or within ninety (90) days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Arrow Electric Company's manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern.

"And it is further ordered that such divestment of the common stock or assets of the said Arrow Electric Company or Hart & Hegeman Manufacturing Company, as the case may be, shall not be made directly nor indirectly to the said The Arrow-Hart & Hegeman Electric Company or to any stockholder, officer, director, employee or agent of, or any one otherwise directly or indirectly connected with or under the control of the said The Arrow-Hart & Hegeman Electric Company.

"And it is hereby further ordered that the respondent The Arrow-Hart & Hegeman Electric Company, within four months from the day of the date of the service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has conformed to this order.

"By the Commission, Commissioner Humphrey dissenting in memorandum attached.

(Signed) Otis B. Johnson, Secretary. (Seal.)"

"Docket No. 1498

"In the Matter of ARROW-HART HEGEMAN, INC.

"July 2, 1932.

"Dissent of Chairman HUMPHREY:

"There is no injury to the public shown in the alleged transfer of stock in this case. There is no evidence to show any injury, except the mere blotting out of whatever competition there existed between the two corporations.

"It seems the majority of the commission has consistently held in all these Section 7 cases, that the mere acquisition of stock of one corporation by a competing corporation is in itself a violation of the statute, regardless of the effect of such acquisition on the public.

"Paragraph II of the order directs that the respondent divest itself absolutely of all the common stock that it acquired as a result of the merger, so as to include in such divestment manufacturing plants and all other property necessary to conduct and operate a complete, going concern.

"Did the respondent acquire stock 'by merger'? If so, what was the value of such stock? What does it now repre-

sent? If the respondent divests itself of such stock, what is the effect of such divestment?

"It appears so plain that none will dispute it, that even granted that the respondent did acquire stock by this merger, it is utterly valueless, and to compel the respondent to divest itself of such stock would be an idle gesture.

"I do not think that the Commission ought to spend its time and money in so futile a performance.

"The third paragraph of the order directs the respondent absolutely to transfer assets, without in any way directing the transfer of the stock. I do not believe that the Courts will ever hold that the Commission has the power to make an order of the character stated either in the first or second paragraph.

"The Section 7 cases have always been regarded by the Commission as especially reprehensible. The acquisition of stock has been the one unpardonable sin.

"From the beginning, the Commission has had employes assigned the duty of reading the papers to see if there were any violations of Section 7 of the Clayton Act. No such method has been followed in regard to any other class of cases. These employes immediately report any item that appears in the press involving stock acquisition. Then, on the merest ex parte showing, without any preliminary hearing as in other cases, complaint is issued and served upon the respondent. The supposed justification for such action was that the respondent might acquire the assets and oust our jurisdiction. Even if true, it did not in any way relieve the respondent from being prosecuted by the Department of Justice if the law had been violated. The anxiety of the Commission to exercise its jurisdiction in these cases, in view of its 'successes' is hard to understand.

"The record shows that we have had about 800 preliminary inquiries and investigations of Section 7 cases. Complaints have been issued in 59 cases, 41 of these cases were afterwards dismissed by the Commission. Order of divesture was issued in 9 cases. One of these was sustained by the Circuit Court, but it is the almost universal opinion of the bar of the country that if this case could have been reviewed by the Supreme Court of the United States it would have been reversed. One order was sustained in part by the Supreme Court. All

the others have been reversed by the Supreme Court. This is the sum of what has been accomplished in over fifteen years of vigorous prosecution under Section 7 of the Clayton Act. Has the result justified the action of the Commission?

"It seems to me, in view of this record of accomplishment, that the Commission is not justified any longer in expending large sums of money in trying these cases—and, in refusing to follow the decision of the Supreme Court in the International Shoe Company case, when, speaking of the Clayton Act, they said,

'the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree * * * that is to say, to such a degree as will injuriously affect the public'."

20. That your petitioner is aggrieved by the respondent's said Findings as to the Facts and Conclusion and the said Order based thereon because they are not warranted by the law or the evidence; and, more particularly, your said petitioner is aggrieved thereby in the following respects and for the following reasons:

First: The said Order was entered though the Commission's Findings do not show and no conclusion is reached that the interest of the public is in any way involved in or benefited by the prosecution, or that the said public has suffered any injury as a result of the acquisition by Arrow-Hart & Hegeman, Inc. of the common stocks of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company or by the subsequent formation of your petitioner, The Arrow-Hart & Hegeman Electric Company, through merger; but, on the contrary, the Commission, in its said Findings, found that by reason of the affiliation and later merger, cost of production was decreased, that there were still other economies and increased development of experimentation, that there was no reduction in quality but there was reduction in selling price and improvement in quality, and that no monopoly exists but that your petitioner does only about twenty-five (25) per cent. of the total business of the country in your petitioner's lines of business, that there are many competitors, some of them very large and powerful, and that there is no lack of competition.

Second: There is no jurisdiction or authority vested in the Federal Trade Commission to make any order to cease and desist except where it is proven by the evidence that the probable result will be an injury to the public, and no such finding has been made in this case; and further it clearly appears from the Findings and from the dissenting opinion of the Chairman of the Commission that there is no injury to the public in this case, and that a majority of the Commission do not recognize that limitation upon the jurisdiction and powers of the Commission.

Third: The said Commission upon the facts proven erroneously concluded that commerce "has been, is or may be" restrained and that there has been any tendency towards monopoly in the electrical wiring device industry as a result of the acquisition by Arrow-Hart & Hegeman, Inc. of the common stocks of the two operating companies, i.e., The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, or as a result of the later formation of your petitioner through merger, since:

(a) There is no evidence in the record to support this conclusion;

(b) There is positive and undisputed evidence in the record to show that from 1927 to 1929 the business of the two operating companies (the two divisions of your petitioner as to the last named year) declined from 24 + of the total business of the electrical wiring device industry to 18% + thereof, thus affirmatively showing a trend away from monopoly;

(c) The Trial Examiner in his report upon the Facts specifically found no restraint of commerce and no tendency to monopoly; and no exception to this finding was taken by the Commission as provided in Article XII of its Rules of Practice hereinafter quoted.

Fourth: The said commission erred in holding that your petitioner acquired all, or any part, of the capital stocks of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company as a result of the said merger; and erred in holding that such acquisition fell within the purview of said Section 7 of the Clayton Act in view of the fact that your petitioner actually acquired the physical assets of the said two operating companies.

Fifth: The said Commission erred in holding that the holders of the preferred stocks of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company had no voting power except in the event the preferred dividends were not paid for six successive quarters, and in not finding that the vote of the preferred stockholders was necessary to effectuate the merger.

Sixth: The said Commission erred in concluding that the said Arrow-Hart & Hegeman, Inc., organized or had the power to organize your petitioner, The Arrow-Hart & Hegeman Electric Company, or that said The Arrow-Hart & Hegeman Electric Company is the legal successor of said Arrow-Hart & Hegeman, Inc., in view of the fact that the merger resulting in the formation of said company could not possibly have been effected without the concurring vote of the holders of preferred stock of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, none of which stock was owned or controlled by said Arrow-Hart & Hegeman, Inc., the holders of said preferred stock holding a larger financial interest than did the holders of the common stock.

Seventh: The said Commission erred in holding that said Arrow-Hart & Hegeman, Inc., by distributing its assets and dissolving, as stated, did not fully cease and desist from the act, or acts, complained of by the Commission in its original complaint.

Eighth: The said Commission had no authority to continue, and erred in continuing, its prosecution after Arrow-Hart & Hegeman, Inc. had distributed its assets, and dissolved.

Ninth: The said Commission erred in denying your petitioner's motion, hereinbefore described, to dismiss the original and supplemental complaints.

Tenth: The said Commission erred in holding that it has jurisdiction over your petitioner under the terms of said Section 7 of the Clayton Act, or otherwise.

Eleventh: The said Commission erred in entering its said order, hereinbefore set forth at length, against your petitioner, and more particularly erred in directing your said petitioner to divest itself of the common stock (which it never owned) and physical properties of The Arrow

Electric Company or the common stock (which it never owned) and physical properties of The Hart & Hegeman Manufacturing Company.

Twelfth: The said the Commission erroneously concluded that Arrow-Hart & Hegeman, Inc. and your petitioner, The Arrow-Hart & Hegeman Electric Company, or either of them, had violated the provisions of said Section 7 of the Clayton Act.

Thirteenth: The said Commission erred in holding that the mere acquisition by Arrow-Hart & Hegeman, Inc. of the common stocks of The Arrow Electric Company and The Hart & Hegeman Manufacturing Company in itself constituted a violation of said Section 7 of the Clayton Act as charged.

Fourteenth: The said Commission erred in concluding that the effect of the acquisition of said common stocks by said Arrow-Hart & Hegeman, Inc. resulted in a lessening of competition between said The Arrow Electric Company and said The Hart & Hegeman Manufacturing Company, since:

(a) There is no fact set forth in said Findings and Conclusion which, in any degree, shows any lessening of competition between said two companies during the corporate existence of said Arrow-Hart & Hegeman, Inc.;

(b) There is no evidence in the record to support this holding;

(c) Said Commission ignores overwhelming evidence in the record to the effect that the purpose of said acquisition was to bring about manufacturing economies and engineering improvements, and was not in any way pointed at the competition existing between the two companies, except to preserve it, and also ignores overwhelming evidence, largely introduced by its own counsel, to the effect that during the corporate existence of said Arrow-Hart & Hegeman, Inc. the competition between the said two companies not only continued unabated as theretofore, but actually increased in intensity.

(d) The Trial Examiner in his report upon the facts specifically found that Arrow-Hart & Hegeman, Inc. did nothing to substantially lessen competition between the two

operating companies during its corporate existence, and no exception to this finding was taken by the Commission as required by its rule hereinafter set forth.

Fifteenth: The said Commission erred in holding that your petitioner dominates the electrical wiring device industry in view of its own findings and in not adopting the still more specific findings of the Trial Examiner's report as follows:

"The combined business of the two operating companies in 1927 was $7,953,766, and in 1929 $8,173,884. The total output of electric wiring devices for the entire United States, as shown by the United States Census Bulletins for the year 1927, was $32,703,331 and for the year 1929, $43,120,093. The respondent has two very powerful competitors with unlimited resources and nation-wide distribution of full lines of devices, namely, the General Electric Company and the Bryant Company, a subsidiary of the Westinghouse; also other powerful competitors not so well known as the General Electric and Westinghouse companies, but with nation-wide distribution of full lines, namely, the Hubbel Company, Pass & Seymour, Weber and Cutler & Hammer. In addition to these competitors who manufacture and sell full lines of devices, there are others who have limited lines but operate on a large scale in limited fields. Among these may be mentioned the Leviton Manufacturing Company which is the largest manufacturer of sockets in the United States and Alcor Manufacturing Company and the Beaver Company of New Jersey who are large manufacturers of candle sockets, and the Standard Manufacturing Company of Chicago, a large manufacturer of canopy switches. In March, 1929, there were approximately seventy-five firms in the United States which manufacture some, or all of the devices manufactured and sold by respondent,"

no exception to this finding having been taken by the Commission as provided by its rule below set forth.

Sixteenth: That in the absence of a finding that the acquisition by Arrow-Hart & Hegeman, Inc. of the common stocks of The Arrow Electric Company and of The Hart & Hegeman Manufacturing Company would probably result in lessening competition to such a degree as would injuriously affect the public, the order of the Federal Trade Com-

mission violates the Constitution of the United States, and particularly the Fifth Amendment thereto, and is null and void.

Seventeenth: The said Commission had no authority to inquire, and erred in inquiring, into the business and affairs of your petitioner and the events which have transpired since its formation on December 31, 1928.

Eighteenth: The said Commission erred in holding that, ever since the formation of your petitioner, there has been, or will likely be, any substantial lessening of competition between Arrow and Hart & Hegeman products, since the evidence in the record overwhelmingly establishes that, for the purposes of sales policies and efforts, your petitioner has, from the outset, been divided into two divisions, the "Arrow" and the "H & H"; that the former division sells exclusively the "Arrow" brand of goods and the latter sells exclusively the "H & H" brand of goods; that each division has its own salesman who compete with one another for business as fully and freely, and precisely in the same manner, as they did before the formation of your petitioner and before the formation of Arrow-Hart & Hegeman, Inc.

Nineteenth: The said Commission's Findings are inadequate, misleading and unsupported by the evidence; the Findings omit essential facts indisputably established by the evidence, and ignores and finds contrary to a substantial part of the Trial Examiner's Report which was favorable to your petitioner, notwithstanding the fact that no exceptions were taken to said Report by the said Commission as required by its rules.

Twentieth. The said Commission erred in finding against your petitioner facts not found by the Trial Examiner in his said Report on the Facts, since counsel for the Commission filed no exceptions to said Report, as required by Article XII of its Rules of Practice, which reads: "The Examiner shall, within 20 days after the receipt of the stenographic report of the testimony * * *, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said ex-

ceptions shall include any additional facts which either party may think proper."

Twenty-first. The said Commission, as the record and facts hereinabove recited disclose, has been guilty of most serious laches in conducting its prosecution, which laches have caused irremediable harm to your petitioner.

Wherefore, your petitioner prays this Honorable Court to review and set aside the said Order of the respondent, the Federal Trade Commission, and to grant such other relief as may be deemed just, lawful and proper.

Dated at Hartford, Connecticut, this 24th day of September, 1932.

The Arrow-Hart & Hegeman Electric Company, Petitioner, by John R. Cook, Its President. Charles. Neave, Arthur L. Shipman, Charles Welles Gross, Wallace W. Brown, Counsel for Petitioner.

Duly sworn to by John R. Cook. Jurat omitted in printing.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1932

No. 183

THE ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Motion to Amplify

NOTICE OF MOTION

SIR: Please take notice that on Monday, January 9, 1933, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the annexed motion will be made before the United States Circuit Court of Appeals for the Second Circuit, at its Court Room in the Post Office Building, in New York City.

January 4, 1933.

Charles Neave, Counsel for Petitioner.

To: Counsel for Federal Trade Commission, 49 Broadway, New York, New York.

Copy of the above notice and motion received this 5th day of January, 1933.

Robt. E. Healey, Counsel for Federal Trade Commission.

Affidavit of Service

STATE OF NEW YORK,
County of New York, ss:

Charles H. Walker, being duly sworn, deposes and says: I am employed by Charles Neave, of Counsel for petitioner in the above matter and am of legal age.

On January 4, 1933 I sent to Robert E. Healy, Esq., Chief Counsel for the Federal Trade Commission in Washington, D. C., by mail, a copy of the annexed notice and motion.

Mr. Healy has acknowledged receipt of this notice and motion by letter dated January 5th, 1933.

On January 5th I served the annexed notice and motion upon the Respondent by exhibiting the originals and leaving copies thereof with Rolf H. Kielland, the Atforney in charge of Respondent's New York office. Mr. Kielland declined to sign the form of receipt at the foot of the notice.

Charles H. Walker.

Subscribed and sworn to before me this 6th day of January, 1933. Harold A. Patterson, Notary Public. New York County Clerk's No. 144. New York County Register's No. 4-P-209. Commission expires March 30, 1934. (Seal of Harold A. Patterson, Notary Public.)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1932

No. 183

THE ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

PETITIONER'S MOTION FOR AN ORDER DIRECTING THE RESPONDENT TO AMPLIFY THE RECORD

Comes now the petitioner, The Arrow-Hart and Hegeman Electric Company, and, for its motion herein, respectfully represents that:

1. Pursuant to Article XII of the Respondent's Rules of Practice the trial of fact in this proceeding was had before one of its trial examiners, namely, the Honorable William C. Reeves, who filed his Report upon the Facts on September 28, 1931, which, among other things, made these findings:

"• • • there is no substantial evidence that commerce was restrained in any sections or communities as

the result of such acquisition or that there was any tendency to create a monopoly. * * *"

"The combined business of the two operating companies in 1927 was $7,953,766, and in 1929 $8,173,884. The total output of electric wiring devices for the entire United States, as shown by the United States Census Bulletins for the year 1927, was $32,703,331 and for the year 1929, $43,120,093. The respondent has two very powerful competitors with unlimited resources and nation-wide distribution of full lines of devices, namely, the General Electric Company and the Bryant Company, a subsidiary of the Westinghouse; also other powerful competitors not so well known as the General Electric and Westinghouse companies, but with nation-wide distribution of full lines, namely, the Hubbel Company, Pass & Seymour, Weber and Cutler & Hammer. In addition to these competitors who manufacture and sell full lines of devices, there are others who have limited lines but operate on a large scale in limited fields. Among these may be mentioned the Leviton Manufacturing Company which is the largest manufacturer of sockets in the United States and Alcor Manufacturing Company and the Beaver Company of New Jersey who are large manufacturers of candle sockets, and the Standard Manufacturing Company of Chicago, a large manufacturer of canopy switches. In March, 1929, there were approximately seventy-five firms in the United States which manufacture some, or all of the devices manufactured and sold by respondent."

"After the organization of the old respondent and before the organization of the new respondent, the separate organizations of the two operating companies as they existed prior to October, 1927, remained intact and no action was taken by the old respondent to direct or control the sales policies of the operating companies, * * *"

2. That said Article XII of the Respondent's Rules of Practice, among other things, provides as follows:

"The Examiner shall, within 20 days after the receipt of the stenographic report of the testimony * * *, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their

exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper."

3. Proceeding under the foregoing rule, the Petitioner filed extensive Exceptions to the said Trial Examiner's Report upon the Facts; the Respondent, however, filed none.

4. Reasonably relying upon the Respondent's certifying to this Court a transcript of the entire record in this proceeding, as by law is required, the Petitioner stated in its Petition to Review and Set Aside the Order of the Respondent, now before the Court, that the Trial Examiner had made the findings of fact set forth above in Paragraph 1. (Petition, Paragraph 20, sub. pars. third (c), Fourteenth (d) and Fifteenth.)

5. The Respondent, however, did not certify to this Court as a part of the transcript of the record either the said Trial Examiner's Report upon the Facts or the Petitioner's Exceptions thereto, although said Report and Exceptions are properly a part of said transcript of record under section 11 of the Clayton Act, so-called, upon which Act this proceeding is based, also under Article XII of the Respondent's Rules above quoted and finally under paragraph 4 of Article 13 of the rules of this Court.

Wherefore the Petitioner respectfully moves that the Respondent be ordered to certify to this Court the said Trial Examiner's Report upon the Facts and the Petitioner's Exceptions thereto, to the end that the record in this case may be made complete and the allegations of the said Petition, above cited, sustained.

Charles Neave, Arthur L. Shipman, Charles Welles Gross, Wallace W. Brown, Counsel for the Petitioner.

Dated this 4th day of January, 1933.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1932

No. 12,309

THE ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Motion to Strike

NOTICE OF MOTION

SIR: Please take notice that on Monday, January 9, 1933, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the annexed motion will be made before the United States Circuit Court of Appeals for the Second Circuit, at its Court Room in the Post Office Building, in New York City.

January 5, 1933.

Robt. E. Healy, Chief Counsel; Martin A. Morrison, Assistant Chief Counsel, and Everett F. Haycraft, Attorney for Respondent.

To Charles Neave, 20 Exchange Place, New York, New York.

Copy of the above notice and motion received this 6th day of January, 1933.

Charles Neave, Counsel for Petitioner.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1932

No. 12309

THE ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

MOTION TO STRIKE CERTAIN MATTER FROM THE PETITION FOR REVIEW HEREIN

Comes now the respondent by its attorneys Robt. E. Healy, Chief Counsel, Martin A. Morrison, Assistant Chief

Counsel and Everett F. Haycraft, Special Attorney and respectfully moves this Honorable Court to enter an order striking from the petition herein Paragraph "C" of subparagraph Three of Paragraph 20 on page 14, Paragraph "D" of subparagraph Fourteen of Paragraph 20, page 16, and all of subparagraphs Fifteen, Nineteen and Twenty of Paragraph 20 on pages 17, 18 and 19 thereof consisting of references to and quotations from the Trial Examiner's report upon the facts for the reason that such matters have no relevancy to the present proceeding.

Robt. E. Healy, Chief Counsel; Martin A. Morrison, Assistant Chief Counsel, and Everett F. Haycraft, Attorney for Respondent.

[Endorsed:] In the United States Circuit Court of Appeals for the 2nd Circuit. The Arrow-Hart & Hegeman Electric Company, Petitioner, v. Federal Trade Commission, Respondent. No. 12309. Motion to strike certain matter from petition for review, with notice. Robt. E. Healy, Chief Counsel for Federal Trade Commission.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1932

No. 183

Motion Argued January 9, 1933. Decided January 30, 1933

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Petition to Review Order of Federal Trade Commission

Before Manton, Augustus N. Hand, and CHASE, Circuit Judges

Motion by petitioner for an order directing the respondent to amplify the record. Motion by respondent to strike out part of record.

Charles Neave, of New York City, and Arthur L. Shipman, Charles Welles Gross, and Wallace W. Brown, all of Hartford, Conn., for petitioner.

Robert E. Healy, of Washington, D. C., Chief Counsel for Federal Trade Commission.

Per CURIAM:

The respondent moves for an order striking from the petition the paragraphs thereof consisting of reference to and quotations from the trial examiner's report upon the facts. The petitioner moves that the respondent be ordered to certify to the court the trial examiner's report upon the facts with the petitioner's exception thereto, alleging that this is necessary to complete the record. The respondent has not certified to this court as part of the transcript of the record the trial examiner's report upon the facts or the petitioner's exceptions thereto, claiming that it is not properly part of the transcript under section 11 of the Clayton Act (38 Stat. 734, 15 U. S. C. A. § 21).

Paragraphs 2 and 3 of Rule 21 of this court make reference to the filing of records by the Federal Trade Commission, and do not require the reports of the trial examiners or exceptions filed thereto to be printed. Nor does paragraph 4, Rule 13 of this court, so require. That section refers only to appeals and records from District Courts, and has no reference to certification of transcripts from the Federal Trade Commission. Such records are covered exclusively by Rule 21. The Commission's report referred to in the Clayton Act (38 Stat. 734) is its order, the testimony, and the pleadings. They are to be certified to this court when a review is sought by a petition for enforcement or a petition for review. But the statute contains no requirements that the trial examiner's report or the exceptions thereto be a part thereof. Such report seems to be prescribed by the rules of practice adopted by the Commission under the general statutory power. Federal Trade Commission Act, 38 Stat. 721, § 6 (g), 15 U. S. C. A. § 46 (g). These reports are for the assistance of the Commission, and are kept in the files of the Commission for reference. The review and the findings thereon, the statute provides, are for the Commission and not the trial examiners. The reports of the trial examiners are not binding upon one charged with violation of the act. Indeed, the act does not

require the Commission to employ examiners to proceed with hearings or to make reports; it authorizes the Commission to employ examiners among other officers. 38 Stat. 718, § 2, 15 U. S. C. A. § 42. The statute authorizes such examiners to administer oaths and affirmations, examine witnesses, and receive evidence. 38 Stat. 722, § 9, 15 U. S. C. A. § 49 (and notes) p. 283. This is not exclusive authority, but discretionary. We assume that the examiner's reports are used as of some assistance to the Commission, but the result or conclusions of the Commission, we must assume, are found in the findings adopted by it.

In the instant case, when the trial examiner's report on the facts was served upon counsel for the petitioner, it was accompanied by a letter signed by the trial examiner calling attention of counsel "to the fact that the enclosed report upon the facts represents only the views of the trial examiner and is not a decision of the Commission. The Commission's final action on the case will be had only after due consideration of the entire record, including exceptions, briefs and arguments."

It appears to have been the practice to omit such trial examiner's report from the records in proceedings before the Circuit Court of Appeals. See J. W. Kobi Co. v. Fed. Trade Comm. (October Term, 1926, C. C. A. 2)[1] where this court denied the petitioner's motion for an order requiring the Commission to certify to the court the report of the trial examiner and the exceptions thereto. See J. W. Kobi Co. v. Fed. Trade Comm. (C. C. A.) 23 F. (2d) 41. The First Circuit followed the practice in John Moir et al. v. Fed. Trade Comm. on October 14, 1925,[1] by striking out the trial examiner's report and the petitioner's exceptions. See John Moir et al. v. Fed. Trade Comm. (C. C. A.) 12 F. (2d) 22. The Seventh Circuit, on December 3, 1928, in Breakstone v. Fed. Trade Comm.,[1] for special reasons there assigned, declined to strike out the trial examiner's report and the exceptions thereto. In the instant case, the Commission's findings of fact make no reference directly or indirectly to the trial examiner's report. The Ninth Circuit, on March 7, 1932, granted a motion to strike out a requirement in an order that the Commission certify the report of the trial examiner, and held that the Commission should not

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[1]No opinion filed.

be required so to certify the report of the examiner unless the report and exceptions are referred to in the findings of the Commission and thereby adopted by it as its findings. Algoma Lumber Co. v. Fed. Trade Comm., 56 F. (2d) 774.

The motion of the respondent will be granted, and the motion of the petitioner denied.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-rooms, in the Post Office building in the city of New York, on the 6th day of February, one thousand nine hundred and thirty-three.

Present Hon. Martin T. Manton, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

A motion having been made herein by counsel for the respondent for an order striking from the petition the paragraph thereof consisting of reference to and quotations from the trial examiner's report upon the facts,

Upon consideration thereof it is

Ordered that said motion be and hereby is granted.

Wm. Parkin, Clerk.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arrow-Hart and Hegeman Electric Co. vs. Federal Trade Commission. Order. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 6, 1933. William Parkin, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-

rooms, in the Post Office building in the city of New York, on the 6th day of February, one thousand nine hundred and thirty-three.

Present Hon. Martin T. Manton, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

A motion having been made herein by counsel for the petitioner that the respondent be ordered to certify to this court the trial examiner's report upon the facts with the petitioner's exception thereto,

Upon consideration thereof it is

Ordered that said motion be and hereby is denied.

Wm. Parkin, Clerk.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arrow-Hart and Hegeman Electric Co. vs. Federal Trade Commission. Order. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 6, 1933. William Parkin, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

against

FEDERAL TRADE COMMISSION, Respondent

Before Manton, Swan, and Augustus N. Hand, Circuit Judges

Petition to review an order of the Federal Trade Commission. An order was entered by the Commission against the Arrow-Hart & Hegeman Electric Co. to divest itself of the ownership of stock and a further direction to divest itself of plant and properties received through a merger

of competing companies. Petitioner appeals. Order affirmed.

Charles Neave, Esq., Arthur L. Shipman, Esq., Charles Welles Gross, Esq., Wallace W. Brown, Esq., Counsel for Petitioner.

Robt. E. Healy, Esq., Chief Counsel; Martin A. Morrison, Esq., Assistant Chief Counsel; Everett F. Haycraft, Esq., Attorneys for Respondent.

MANTON, Circuit Judge:

Respondent entered an order on a complaint filed under § 7 of the Clayton Act (15 U. S. C. A. § 18) directing the Arrow-Hart & Hegeman Electric Co. to divest itself of the common stock of Hart & Hegeman Mfg. Co. and Arrow Electric Co., two corporations engaged in the manufacture of electrical devices in competition in interstate commerce. Both manufacturing corporations had issues of preferred stocks which were not transferred and which were part of the corporations' obligations as hereinafter stated.

The Hart & Hegeman Manufacturing Company was incorporated in 1891, under the laws of Connecticut, having common and preferred stock. The Arrow Electric Company was organized under the Connecticut laws in 1903 and it had both common and preferred stock. Its preferred stock was non-voting except on six consecutive defaults of quarterly dividends. The common stocks of both corporations were closely held. Both corporations were engaged in the manufacture and sale of electrical wiring devices and were in direct and substantial competition. The respondent found that 59% of the Hart & Hegeman Mfg. Co.'s sales were in competition with the Arrow Electric Co. sales in 1927. The combined total sales of the two companies in 1927 was 24% of the total sales of the entire electrical wiring device industry.

Pursuant to an agreement of August 6, 1927, of the common stockowners of both manufacturing companies and as a part of the plan to join the companies the Hart & Hegeman Mfg. Co.'s old preferred stock and also a preferred issue of the H. T. Paiste Co., its subsidiary, were retired and a preferred non-voting stock and additional common stock were issued. Thereafter both Hart & Hegeman Mfg.

Co. and the Arrow Electric Co. had outstanding preferred stock. On October 6, 1927, Arrow-Hart-Hegeman, Inc. (the holding company) was organized under the Connecticut laws with an authorized capital stock of $2,000,000 of $10 par common stock. On October 10, 1927, Arrow-Hart Hegeman, Inc., acquired the 20,000 shares of Hart & Hegeman Mfg. Co. common voting stock in exchange for 80,000 shares of its stock, and acquired the 30,000 shares of the Arrow Electric Co. common voting stock in exchange for 120,000 shares of its common stock. It did not, however, acquire any of the two companies' preferred stock.

On March 3, 1928, the respondent issued its original complaint against Arrow-Hart & Hegeman Inc. charging violations of § 7 of the Clayton Act. On September 7, 1928 this holding company filed an answer and on November 10, 1928, its directors recommended dissolution and distribution of its assets, consisting of the Arrow Electric Co. and the Hart & Hegeman Mfg. Co. common stock to the shareholders. A notice to the stockholders recommending such dissolution enclosed a form of proxy and consent to the plan of dissolution and expressed the view that efficiency and economy would be promoted by "actual merger and consolidation of the two companies". The stockholders meeting was called for December 10, 1928. To avoid federal tax on liquidation all the shares of common stock of the Arrow Electric Co. then held by Arrow-Hart & Hegeman Inc. were transferred to Arrow Mfg. Co., a holding company for tax purposes, and in consideration therefor, the tax company issued all its capital stock to the stockholders of Arrow-Hart & Hegeman, Inc. All the shares of the common stock of the Hart & Hegeman Mfg. Co. then held by Arrow-Hart & Hegeman Inc. were transferred to H. & H. Electric Co., another tax company and in consideration of this transfer the tax company issued all its capital stock directly to the stockholders of Arrow-Hart & Hegeman Inc. These stockholders thus received the stock of the two tax companies. Arrow-Hart & Hegeman Inc. then had no assets and was dissolved. The four corporations, the two manufacturing and the two tax companies, agreed to merge or consolidate and did so on December 31, 1928 under the Connecticut laws, into the Arrow-Hart & Hegeman Electric Co., petitioner. The preferred stock of Arrow Electric Co. and Hart & Hegeman Mfg. Co. con-

stituted nearly 73% of their total par value capitalization and was in no way concerned with the organization or dissolution of Arrow-Hart & Hegeman Inc. or with the formation of the tax companies. The capitalization of the petitioner was $2,000,000 $10 par value common stock and $3,228,300 of $100 par value preferred stock; 18,950 shares of preferred stock were issued for the Arrow Electric Co. Preferred and 13,333 shares for Hart & Hegeman Mfg. Co. preferred; and 100,000 shares of common stock were issued for H. & H. Electric Co. common stock and 100,000 shares for Arrow Mfg. Co. common stock (then held by Arrow-Hart & Hegeman Inc. stockholders' representatives).

On January 1, 1929, the Board of Directors of the petitioner held its first meeting and on January 28 the stockholders held their first meeting. On June 29, 1929, the respondent issued a supplemental complaint naming the petitioner as a new respondent and alleging that the original respondent Arrow-Hart & Hegeman Inc. had formed petitioner by the consolidation of the manufacturing and tax companies. The respondent found that the acquisition of stock by Arrow-Hart & Hegeman Inc. and the petitioner's acquisition of the assets of the manufacturing companies may have the effect of lessening competition between them and may restrain commerce in the electrical wiring device industry and has the tendency to create a monopoly.

The respondent concluded that the acquisition of stock by Arrow-Hart & Hegeman Inc. and the voting of said stock which culminated in the organization of the petitioner, constituted a violation of § 7 of the Clayton Act. The second paragraph of § 7 reads:

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in the commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The order entered herein directs the petitioner to divest itself of stocks and assets of both manufacturing com-

panies. Section 7 of the Clayton Act upon which the prosecution is based, addresses itself to the stock acquisition only and § 11 of the Act gives the respondent power over a corporation violating the Act to issue an order requiring it to cease and desist from the violation by divesting itself of the common stock held.

Congress intended to prevent, by § 7, a corporate control which could be concentrated by prohibited acquisition of stock. Wrongful acquisition of the stock facilitates a merger or consolidation of assets. When ordered to divest itself of stock, the utmost good faith should be used by a corporation in order to remove as far as possible the corporate concentration of ownership caused by the wrongful acquisition of stock. One method of divestiture would be to restore the exact status existing before the wrongful acquisition by distributing the stock acquired to its owners before acquisition. It should be recognized that where shares of corporations which pass from one owner to another are being considered it would be difficult, if not impossible, to transfer the stock to the identical group of shareholders who held the stock prior to the formation of the holding corporation. The stock wrongfully acquired might be sold to third parties. The holding company might have distributed its assets, consisting of stock of the competing companies, to its own stockholders in such a manner that each stockholder would have shares of both competing companies. For example, Arrow, Hart & Hegeman Inc. in exchange for the surrender in dissolution of its 200,000 shares, might have distributed the 30,000 common shares of Arrow Electric Co. and the 20,000 common shares of Hart & Hegeman Mfg. Co. in a ratio of 3 Arrow and 2 Hart & Hegeman for 10 Arrow-Hart & Hegeman Inc. Corporate control would be removed but some measure of common ownership and common interest of a group of individuals in both competing companies would remain. That common ownership would be a result of the unlawful acquisition by the holding company and would facilitate a later merger or consolidation of the competing companies brought about by the individuals without any further intervention of the holding company.

But if the merger by transfer of assets is completed before the Federal Trade Commission filed its complaint, it

cannot be attacked under the Clayton Act. Thacher Mfg. Co. v. Fed. Trade Comm., 272 U. S. 554.

Whether, under the rule of Western Meat Co. v. Fed. Trade Comm. (272 U. S. 554) common ownership in individuals would be sufficient or, in addition, continued corporate control would be required to render the merger or consolidation objectionable and subject to action by the respondent, we need not decide because in the instant case both factors of common ownership and corporate control of even the details of the complete consolidation are present. The stock of the competing companies was retained in common ownership until the consolidation was completed.

And Arrow-Hart & Hegeman, Inc. did not distribute Arrow Electric Co. and Hart & Hegeman Mfg. Co. stock to its stockholders free from any plan of consolidation, but it did distribute the stock to the Arrow Mfg. Co. and H. & H. Electric Co. respectively, found by the respondent to have been established for tax purposes. Since that was their purpose, and since each tax company only held the stock of one manufacturing Company, the plan would seem to be no more objectionable than direct distribution of Arrow Electric Co. and Hart & Hegeman Mfg. Co. stock to the Arrow-Hart & Hegeman Inc. stockholders, if the tax companies' stock had been distributed to the Arrow-Hart & Hegeman Inc. stockholders directly. But the tax companies' stock was not distributed to the Arrow-Hart & Hegeman Inc. stockholders to merge or consolidate the four companies as they pleased free from control of Arrow-Hart & Hegeman Inc. The letter of November 10, 1928 from Arrow-Hart & Hegeman Inc. to its stockholders advised dissolution and distribution of stock of Arrow Electric Co. and Hart & Hegeman Mfg. Co. in kind to the stockholders. Proxies for that purpose were enclosed. The letter stated the belief that after distribution of the stock and liquidation of Arrow-Hart & Hegeman Inc. a consolidation would be proposed by the separate manufacturing companies and expressed a confidence that efficiency and economy would be prompted by consolidation.

After the tax companies were formed by Arrow-Hart & Hegeman Inc. on November 30, 1928, a supplemental letter was sent to the stockholders on December 1, 1928. This letter outlined the entire plan of reorganization including the final steps for formation of the petitioner by consolida-

tion and enclosed proxies authorizing six persons to act for the stockholders at a stockholders' meeting on December 6, 1928, to carry out the entire plan. The proxies authorized the named persons to receive the tax companies' stock and to exchange it for the stock of the consolidated company, the petitioner. By the exercise of these proxies the stockholders adopted the plan on December 6, 1928 and on the same day Arrow-Hart & Hegeman Inc. transferred the stock of the manufacturing companies to the tax companies. Thus the stockholders of Arrow-Hart & Hegeman Inc. were requested to and did accept the entire plan for formation of the petitioner before Arrow-Hart & Hegeman Inc. divested itself of the manufacturing companies' stock. On December 31, 1928 at stockholders' meetings of the tax and manufacturing companies, the common shareholders being represented by their proxies, the plan was carried out and the petitioner was formed. This supplemental letter of December 1, 1928 and the enclosed proxies not only proposed a plan but went further. By the letter and the use of the proxies, Arrow-Hart & Hegeman Inc. dictated and controlled the formation of the petitioner and therefore the petitioner comes under the jurisdiction and is subject to the order of the respondent. Fed. Trade Comm. v. Western Meat Co., 272 U. S. 554.

Divestiture of stock must be actual and complete and may not be effected by using the control resulting therefrom to secure title to the possessions of the competing companies' property. The purpose to be attained is to avoid the possibility of permitting consolidation or merger which substantially lessens competition in trade by the use of the stock held in merged ownership. United States v. New England Fish Exchange, 258 Fed. 732, 746. The control which Arrow-Hart & Hegeman Inc. was able to and did exercise by ownership of the common stock even though there was outstanding in preferred stock 72% of the par value of the manufacturing companies' total stock issued, is a clear example of unlawful stock control providing the effect has been to substantially lessen competition.

We think §11, requiring a divestiture of stock when §7 is breached, contemplates also a divestiture of the transfer of the assets which came about through the ownership and use of the stock unlawfully held by the holding com-

pany. The supplemental complaint filed June 29, 1929 could reach what was done by the formation of the petitioner and the transfer of assets to it. The powers of the respondent, confined as they are by the original and supplemental complaint to a violation of § 7, are sufficient to require not only divestiture of stock but also the divestiture of assets obtained through the means of stock ownership.

In 1927 the entire industry sold $32,703,331 of the kind of products produced by the manufacturing companies. The Arrow Electric Co. sales amounted to $3,849,000 and those of the Hart & Hegeman Mfg. Co. amounted to $4,537,000. In 1929 the sales of the entire electrical wiring device industry amounted to $43,120,095 of which the Arrow Electric Co. had $3,584,000 and the Hart & Hegeman Mfg. Co. $4,599,000. The total sales for 1928 were not proved, but the combined sales of both companies for 1927 were about 24% of the industry's total sales for that year. There is evidence to support the conclusion of the respondent that there was a tendency to restrain trade in the discontinuance of the competition between the two manufacturing companies.

Competition connotes more than mere rivalry between salesmen selling different brands of products of the same quality, at the same price, and manufactured by the same company. Sinclair Refining Co. v. Federal Trade Comm., 276 F. 686, 688 (C. C. A. 7). Competition is eliminated where two formerly competing units are brought under one dominating ownership. United States v. So. Pac. R. Co., 259 U. S. 214; United States v. Union Pacific R. R. Co., 226 U. S. 61.

As has been often announced, the purpose of the provisions of the Clayton Act is to reach unlawful agreements in their incipiency. Standard Fashion Co. v. Magrane Houston Co., 258 U. S. 346. In International Shoe Co. v. Federal Trade Comm. (280 U. S. 291), the Supreme Court required evidence of substantial competition in fact, in order that there may be established an effect upon the public interest and said:

"Obviously, such acquisition will not produce the forbidden result if there be no pre-existing substantial competition to be affected; for the public interest is not con-

cerned in the lessening of competition, which to begin with, is itself without real substance."

The converse is true and if there is real substance in the competition, the public interest is affected. In that case, only 5% of the commodities produced by each company were competitive, while in the instant case 59% by volume of sales of Hart & Hegeman Mfg. Co.'s products competed with Arrow Electric Co. products.

In Vivaudou Inc. v. Federal Trade Comm. (54 Fed. [2] 273), we found from the evidence that there was no tendency to create a monopoly or to restrain trade and that there was no substantial lessening of competition for the reason that there was a lack of competitive quantity and quality in the lines of articles produced by the three companies there involved. It appeared that two-thirds of one company's business consisted of talcum powder and a small volume of compacts, whereas the second company had a large sale of compacts and extracts and the third company's principal business was face creams.

But in the instant case, we think there was a substantial competition between the two companies acquired by the holding company through stock ownership with the result that there was a substantial lessening of competition in which the public was interested and petitioner violated § 7 of the Clayton Act.

Order affirmed.

Judge Swan dissenting on the ground that the commission's order exceeded its jurisdiction.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arrow-Hart & Hegeman Electric Company v. Federal Trade Commission. (Copy.) Opinion. Manton, Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-rooms, in the Post Office building, in the city of New York, on the 5th day of June, one thousand nine hundred and twenty-three.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

ARROW-HART AND HEGEMAN ELECTRIC COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

Petition to Review an Order of the Federal Trade Commission

This cause came on to be heard on the transcript of record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is hereby ordered, adjudged and decreed that the order of said Federal Trade Commission be and it hereby is affirmed.

Wm. Parkin, Clerk.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Arrow-Hart and Hegeman Electric Company vs. Federal Trade Commission. Order. United States Circuit Court of Appeals, Second Circuit. Filed Jun. 6, 1933. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1060, inclusive, in 2 volumes, contain a true and complete transcript of the record and proceedings had in said Court in the case of Arrow-Hart and Hegeman Electric Company, Petitioner, against Federal Trade Commission, Respondent, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 13th day of June, in the year of our Lord one thousand nine hundred and thirty-three, and of the Independence of the said United States the one hundred and fifty-seventh.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 11, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,966. U. S. Circuit Court of Appeals, Second Circuit. Term No. 363. The Arrow-Hart & Hegeman Electric Company, petitioner, vs. Federal Trade Commission. Petition for writ of certiorari and exhibit thereto. Filed August 19, 1933. File No. 363, O. T. 1933.

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CLERK

No. 363

In the Supreme Court of the United States

OCTOBER TERM, 1933

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY,
Petitioner.

v.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT OF PETITION

CHARLES NEAVE,
ARTHUR L. SHIPMAN,
CHARLES WELLES GROSS,
WALLACE W. BROWN,
Counsel for Petitioner.

THE CASE, LOCKWOOD & BRAINARD CO.
HARTFORD, CONN.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1933.

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY, *Petitioner* v. FEDERAL TRADE COMMISSION, *Respondent*	No.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, The Arrow-Hart & Hegeman Electric Company, a Connecticut corporation, respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Second Judicial Circuit to review a judgment of that Court entered on June 6, 1933, which affirmed by Judges Manton and Augustus N. Hand (Judge Swan dissenting) an order of the Federal Trade Commission, respondent herein, entered against your petitioner on July 6, 1932. A transcript of the record in the case, including the proceedings in the Circuit Court of Appeals, is furnished herewith pursuant to Article 38 of the Rules of this Court.

Summary and Short Statement of the Matter Involved

This is a proceeding by the Federal Trade Commission alleging violation of the provisions of section 7 of the Clayton Act (15 U. S. C. A., sec. 18), the pertinent paragraph of which section reads:

> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The Commission assumes to have jurisdiction over, and authority to enter its present sweeping order against, the petitioner, which was formed through the physical merger of two small Connecticut manufacturing corporations, because of the following facts:

Those two small companies were The Arrow Electric Company (herein called Arrow) and The Hart & Hegeman Manufacturing Company (herein called Hart & Hegeman), the capitalization of which was, in 1927, as follows:

	Common Stock (par $25)	Preferred Stock (par $100)
Arrow	$750,000	$2,000,000
Hart & Hegeman	500,000	1,333,300

For many years Arrow and Hart & Hegeman had been manufacturers of electrical wiring devices which they marketed nationally, the former under the

"Arrow" brand, the latter under the "H. & H." brand. In 1927 41% of the total business of Hart & Hegeman was not competitive with Arrow; Arrow emphasized, and had a reputation in the trade for its socket line whereas Hart & Hegeman emphasized its switch line and was thought of by the trade in general as primarily a switch manufacturer.

In the early part of 1927, Mr. Shiras Morris, president of Hart & Hegeman, died. He had been a dominating figure in the company, and he and his family had owned more than a majority of its common stock. The loss of Mr. Morris left Hart & Hegeman without an assured position in the electrical wiring device industry. In view of this situation, Mr. Morris' widow and her advisers decided that, for the best interests of herself and her family, their stock should be sold. Several months' effort to find a suitable purchaser for this stock was fruitless. In July of 1927, however, informal negotiations were opened with Mr. Grier, then executive head of Arrow. These negotiations culminated in the incorporation, under Connecticut laws, of Arrow-Hart & Hegeman, Incorporated (herein called the holding company) which was formed to acquire, and did acquire, in October of 1927 the common capital stocks (and the common capital stocks only) of both Hart & Hegeman and Arrow.

The holding company was formed not to suppress or lessen the competition which existed between the two manufacturing companies but solely to achieve manufacturing economies and improvements. Indeed, the holding form of company rather than an outright merger was advocated at the time because it seemed best calculated to work out the desired manufacturing affiliation while preserving the competitive situation and the good will attaching to the separate brands. And

during the life of the holding company, which was from October 1927 to December 1928, it made no attempt to influence the sales policies or practices of the two manufacturing companies and, in fact, these sales policies and practices continued independently and exactly as always before. The Commission found no facts showing that, during the period of the holding company, there was any restraint of trade or lessening of competition but only that manufacturing economies and improvements were effected.

On March 3, 1928, the Commission issued a complaint against the holding company, charging it with a violation of section 7 of the Clayton Act, cited above.

Thereafter, in early December of 1928, the holding company, to meet the criticism of the Commission and thereby to put an end to the pending litigation, but nevertheless without prejudice to its rights, believing it had not violated the law, distributed its assets and dissolved.

In dissolving, the holding company's original plan had been to distribute its assets directly to its stockholders. However, upon being advised that such distribution might involve its stockholders in a heavy, liquidation profit tax, it distributed its Arrow common stock to a tax company which was formed for the purpose of receiving it and distributed its Hart & Hegeman common stock to another tax company similarly formed. The capital stocks of the two tax companies were issued directly to the stockholders of the holding company, this constituting the consideration for the distribution described. As a part of this tax program, the holding company had proposed a plan of reorganization (but was itself powerless to carry it out) which contemplated a later merger between the two manufacturing companies and the two tax companies.

The contemplated merger, resulting in the petitioner, took place on December 31, 1928, under the laws of Connecticut, following action by the stockholders (both preferred and common) of Arrow and Hart & Hegeman and of the two tax companies, but not of the holding company which was in dissolution.

The holding company did not organize the petitioner. The undisputed facts of the record show conclusively that it did not. At the time the merger was voted by the other companies, the holding company had been in dissolution for some three weeks, i.e. since December 10, 1928. None of the four companies involved in the merger considered the merger or took any action upon it until after December 10, 1928. The stockholders of each of the four companies at the time of the merger were free to do as they chose. Moreover, the Commission has ignored, and the Circuit Court of Appeals has apparently not properly understood, the fact that *the vote of the preferred stocks of the two manufacturing companies was as necessary to merger as was the vote of the common stocks; no merger could be effected without the affirmative vote of at least two-thirds of the preferred stocks. No share of these preferred stocks—stocks which represented about 73% of the capitalization of the two companies—was ever owned or controlled by the holding company.* The preferred stockholders never had any connection with the holding company and did not act on the merger until after that company was in liquidation.

The public has suffered no injury through the formation either of the holding company or, later, of the petitioner; on the contrary, the voluminous evidence in the record on the subject is all to the effect that this coming together of the two manufacturing companies has affirmatively benefited the public since, by virtue

of the manufacturing economies and improvements made possible thereby, it has meant lowered prices, improved quality (in which safety is a big factor), more new wiring devices and, to some communities, it has meant continued service which might otherwise have had to be seriously curtailed or abandoned.

So far as monopoly or tendency to monopoly is concerned, it appears that in 1927 the combined "Arrow" and "H. & H." business amounted to about 24% of the business of the industry while in 1929 it amounted to less than 19% thereof (1927 and 1929 were the only years for which United States census figures were available at the time of the trial), and that the petitioner had some seventy active competitors, among them the General Electric Company and the Bryant Electric Company (a subsidiary of Westinghouse Electric and Manufacturing Company). The Circuit Court of Appeals makes no finding of any tendency to monopoly but it fails to remark upon the actual trend away from monopoly as disclosed by the 1929 figures.

As to restraint of trade: the Commission produced not one competitor, not one jobber, not one ultimate consumer, not one member of the general public, who found the affiliation and later merger of the two manufacturing companies objectionable; the petitioner, on the other hand, through proper officers, deliberately produced two of its foremost competitors, the General Electric Company and the Bryant Company, who found this affiliation and merger beyond criticism.

Before the merger was effected, the essential facts of it were laid before the Department of Justice of the United States which offered no objection to it.

On January 11, 1929, the Commission was formally notified that the holding company was in dissolution and that the petitioner had been formed. During the

succeeding five months no objection or protest of any kind was received from the Commission. On June 29, 1929, it filed its supplemental complaint in this proceeding, naming the petitioner as a co-respondent. On October 11, 1929, the cause was at issue on the supplemental complaint. The Commission, however, made no move to take testimony in the case until May 25, 1931, some *nineteen* months later. The delays in prosecution were inexcusable and have operated most unfairly upon the petitioner and its stockholders, by virtue of the fact that, during these delays as well as at other times, the petitioner has gone steadily forward building for the future, working out manufacturing economies and improvements in design, winning good will, etc. The Commission's order against the petitioner (Record, p. 261) was entered on July 6, 1932. Although the petitioner was but a co-respondent, no order was issued against the holding company.

The order in this case is one which, in effect, would tear the petitioner into two parts; it is obviously improbable that either part could survive, or could flourish, under so heroic an operation, particularly in view of the distressed condition in which business finds itself today. Thus the Commission's order, if enforced, would work good to no one. On the contrary, it would work a distinct disservice to the general public in annihilating, or greatly weakening, the Arrow and the H. & H. lines, or one of them; it would throw many persons out of work at a time when the Federal Government is directing every energy to restoring employment throughout the country; it would injure many innocent stockholders and especially those preferred stockholders, constituting a considerable segment of the general public, who played no part in the formation of the holding company and who represented 73% of the

capitalization of the two manufacturing companies involved; and, by entirely removing, or all but removing, a strong competitor from the electrical wiring device industry might tend to weaken the vigor of the competition now prevailing in that industry,—a result which our law makers could hardly have intended.

And so severe a penalty is imposed simply because it is considered that there was error in the formal machinery employed. Had the two companies merged in the first place not even the Commission would have claimed a violation of law; but because a less drastic affiliation was first worked out through the medium of a holding company (which, ironically enough, was chosen to preserve the competitive situation between the two companies) the guilt is said to be deep and to warrant a wrecking of the petitioner.

Reasons Relied on for the Granting of a Writ of Certiorari

The discretionary power of this Court is invoked upon the following grounds:

1. The decision of the Circuit Court of Appeals below, holding that absence of injury in fact to the public is not material in a prosecution under section 7 of the Clayton Act, involves a question of vast importance to business and to the general public and is in conflict with principles enunciated in decisions of this Court, particularly in *International Shoe Company* v. *Federal Trade Commission*, 280 U. S., 291, 74 L. ed., 431 and note, 1930, and in *Appalachian Coals, Inc., et al* v. *United States*, 53 Sup. Ct. Rep., 471, 1933.

2. The decision of the Circuit Court of Appeals below is in conflict with the decision of the Circuit Court of Appeals for the third circuit rendered in *Temple*

Anthracite Coal Company v. *Federal Trade Commission*, 51 Fed (2d) 656, 1931; these two courts have reached opposite conclusions upon an important question of Federal law which, even apart from the stated conflict, should be finally settled by this Court.

3. In affirming the order of the Commission which directs the petitioner to divest itself absolutely of physical properties although it never acquired and does not now hold a single share of the capital stocks of either the Arrow or the Hart & Hegeman manufacturing companies, and although such a divestment would be confiscatory not only of the interests of common stockholders but also of preferred stockholders who neither directly nor indirectly were connected with the former holding company, the Circuit Court below has decided important questions of Federal law which have not been, but should be, settled by this Court.

4. The finding of the Commission, affirmed by the Court below, that the former holding company organized the petitioner is untenable as a matter of fact and of general law and is oppressively unjust.

Wherefore it is respectfully submitted that the writ of certiorari should issue as prayed.

CHARLES NEAVE,
ARTHUR L. SHIPMAN,
CHARLES WELLES GROSS,
WALLACE W. BROWN,
Counsel for Petitioner.

August 19, 1933.

BRIEF FOR PETITIONER IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

A subject index and a table of cases and statutes cited will be found at pages i-ii, *supra*.

The Opinions of the Court Below

The Circuit Court of Appeals for the Second Circuit delivered two opinions in this case. The first opinion directs itself to two motions and is reported in 63 Fed. (2d), 108; it appears also in the Record, at page 1039. The second opinion directs itself to the merits of the case and is reported in 65 Fed. (2d), 336; it appears also in the Record, at page 1043.

Jurisdiction

The foregoing petition for a writ of certiorari is filed under the provisions of Section 240 (a) of the Judicial Code of the United States as amended by an Act of Congress of February 13, 1925 (U.S.C., title 28, sec. 347, [28 U.S.C.A., sec. 347]), and in accordance with section 350 of that Code and Article 38 of the Rules of this Court.

The case arises under and involves sections 7 and 11 of the Clayton Act (U.S.C., title 15, sections 18, 21 respectively [15 U.S.C.A., sections 18, 21]). The judgment of the Circuit Court of Appeals below, whose jurisdiction was invoked under section 11 of the Act referred to, affirms an order entered by the Federal Trade Commission against the petitioner, this order being based upon a finding by the Commission that the petitioner had violated section 7 of this Act. The relevant portion of section 7 is quoted in the petition,

supra, at page 2. The relevant portion of section 11 of the Act confers authority upon the Commission to enforce compliance with section 7 and, in conjunction with machinery for prosecution, prescribes the method of enforcement, to wit, the issuance of an order requiring the offending corporation "to cease and desist from such violations, and divest itself of the stock held * * *"; it also vests in the Circuit Court of Appeals of the United States jurisdiction to enforce, set aside or modify any order issued by the Commission.

The date of the judgment to be reviewed was June 6, 1933; the date upon which the foregoing petition for a writ of certiorari is presented to this Court is August 19, 1933.

Some of the cases believed to sustain the jurisdiction of this Court are *International Shoe Company* v. *Federal Trade Commission*, 280 U. S., 291, 1930, *Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554, 1926, *Swift and Co.* v. *Federal Trade Commission*, 272 U. S. 554, 561, 1926, *Thatcher Manufacturing Company* v. *Federal Trade Commission*, 272 U. S. 554, 560, 1926.

Statement

The facts are sufficiently stated in the petition, *supra*, at pages 2-8.

Specification of Errors

The errors which the petitioner will urge if the writ of certiorari is granted are that the Circuit Court of Appeals for the Second Circuit erred:

1. In holding that the petitioner violated section 7 of the Clayton Act notwithstanding the fact that neither it, nor the holding company which existed prior

to its formation, ever caused injury to the public but, on the contrary, benefited it.

2. In holding (a prerequisite to its judgment against the petitioner) that the holding company violated section 7 of the Clayton Act in acquiring the common stocks of the Arrow and the Hart & Hegeman manufacturing companies.

3. In holding that the holding company organized the petitioner.

4. In holding that, under sections 7 and 11 of the Clayton Act, the Commission has jurisdiction over the petitioner, a corporation which never acquired, held, owned or controlled a single share of the capital stocks of either the Arrow or the Hart & Hegeman manufacturing companies.

5. In holding that the Commission has the power, under section 11 of the Clayton Act, to order the petitioner to divest itself of physical properties which it acquired, not through the use of capital stock, but by virtue of the physical merger which brought it into being.

6. In holding that, except as it may be incidental to an order directing stock divestment, section 11 of the Clayton Act confers power on the Commission to direct a corporation to divest itself absolutely of physical properties.

7. In holding that the Commission's order, which if carried into effect would cut the petitioner in two, may disregard and virtually confiscate the property rights of the greatly preponderant group of preferred stockholders who played no part in the organization or life of the holding company.

8. In affirming the order of the Commission.

Summary of Argument

The points of argument follow the reasons relied upon for the allowance of the writ of certiorari, *supra*, pages 8-9.

Argument

1. *The decision of the Circuit Court of Appeals below holding that absence of injury in fact to the public is not material in a prosecution under section 7 of the Clayton Act involves a question of vast importance to business and to the general public and is in conflict with principles enunciated in decisions of this Court.*

There is no question but what the transactions complained of by the Commission in this case not only did not injure, or tend to injure, the public in fact but, on the contrary, affirmatively benefited it. There is no dispute in the record on the subject. By virtue of the formation of the holding company, the Arrow and the Hart & Hegeman manufacturing companies were enabled to effect great economies and to work many improvements in their manufacturing processes. These were reflected directly in lowered prices and improved quality of merchandise offered to the public. With the merger of the two manufacturing companies into the petitioner identical benefits were realized, and will continue to be realized, by the public. In addition, the merger has made possible the continued offering of both the "Arrow" and the "H. & H." lines in territories to which one or both of them might otherwise have been lost.

As to monopoly, it has been pointed out (*supra*, page 6) that in 1927 the Arrow and Hart & Hegeman business combined amounted to approximately 24% of the total business of the electrical wiring device industry

while in 1929 it had dropped to less than 19% thereof; also that the petitioner has some seventy active competitors, including such powerful corporations as the General Electric Company and the Bryant Electric Company (Westinghouse). The Court below finds no tendency towards monopoly, but fails to remark upon the 1929 figures which show that the actual tendency has been *away* from monopoly.

The transactions complained of by the Commission have not restrained, or tended to restrain, trade in the electrical wiring device industry. Not only did the Commission produce no witness, whether competitor, jobber or ultimate consumer, who complained against the petitioner on this score, or on the score of tendency to monopoly, but the petitioner itself called as witnesses two of its principal competitors who gave it unequivocal acquittance in the matter.

Under these circumstances, is a prosecution under section 7 of the Clayton Act proper? It is respectfully submitted that the affirmative answer of the Circuit Court of Appeals below erroneously construes this Act, the proper construction of which is of great importance to business and to the public generally, and is in conflict with principles enunciated by this Court, particularly in *International Shoe Company* v. *Federal Trade Commission*, 280 U. S. 291, 74 L. ed., 431 and note, 1930, and in *Appalachian Coals, Inc., et al.* v. *United States*, 53 Sup. Ct. Rep., 471, 1933.

In the first case named, the International Shoe Company acquired all of the capital stock of the W. H. McElwain Company. This acquisition was attacked by the Commission under section 7 of the Clayton Act. It appeared that in respect of 95% of the business of the two companies there was no competition; also that, at the time of the acquisition complained of, the McElwain

Company was in failing circumstances and that its actual failure would have resulted in loss to its stockholders and injury to the communities where its plants were operated. Although section 7 of the Act involved makes no reference to such contingencies or to the public interest generally, this Court held that there had been no prejudice to the public within the meaning of the Act (280 U. S., 297-8, 302-3) and that the Shoe company was not guilty of violating it.

The essence of this decision, we submit, is the absence of injury to the public. This Court simply carried to the Clayton Act, as if had previously carried to the Sherman Act (15 U.S.C.A., sec. 1), the rule of reason. Neither act, it should be especially noticed, makes any mention of the public interest. Logically, there can be no reason for holding that the actual absence or presence of injury to the public shall be of paramount importance with respect to one act but not with respect to the other.

Among other things, this Court says in its opinion, at pages 297-8:

> "Section 7 of the Clayton Act, as its terms and the nature of the remedy prescribed plainly suggest, was intended for the protection of the public against the evils which were supposed to flow from the undue lessening of competition. In *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81, 87, the Court of Appeals for the Third Circuit applied the test to the Clayton Act which had theretofore been held applicable to the Sherman Act, namely, that *the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or unduly obstructing the due course of trade.* In *Federal Trade Commission* v. *Sinclair Co.*, 261 U. S. 463, 476, referring to the Clayton Act and the Federal Tade Commission Act, this Court said:

"The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain."

"Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 357; *that is to say, to such a degree as will injuriously affect the public.* Obviously, such acquisition will not produce the forbidden result if there be no pre-existing substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which, *to begin with*, is itself without real substance." (Italics ours).

The Circuit Court below, adopting the argument of the Commission, has interpreted the *Shoe* case to mean that the public *ipso facto* is injured where, as in the case at bar, the products of the two corporations involved were in substantial competition with one another, i.e., 59% of the products of the Hart & Hegeman company were in competition with the products of the Arrow company (65 Fed. (2d), 340). We believe this interpretation to be untenable. In the *Shoe* case it was held that there was no infraction of the Clayton Act because there had been no injury to the public; that the public had not been injured because it had no concern in a lessening of competition which, "*to begin with*," was insubstantial, *also* because the company whose stock was acquired was in failing circumstances. Each of these reasons was held to be adequate in itself (opinion, p. 303). There was no need to push the inquiry further. The Court below entirely overlooks the

fact that, in resolving the question of the presence or absence of injury to the public, this Court did not confine itself to an examination of the competitive situation which had existed between the two companies. The test announced in the *Shoe* case obviously is: has the public been injuriously affected by the stock acquisition complained of? It is the test, not the factual situations of a particular case, which is important.

The position taken by the Commission, and affirmed by the Court below, is reminiscent of that taken by the Government in prosecutions brought by it under the Sherman Act (15 U.S.C.A., sec. 1) before the promulgation of the rule of reason in *Standard Oil Company v. United States*, 221 U. S. 1, 49, et seq., 1911. Section 1 of that Act, it will be recalled, provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, among the several States, or with foreign nations, is hereby declared to be illegal * * *."

In the *Standard Oil* case counsel for the Government argued that this rigid language (more rigid indeed than that of section 7 of the Clayton Act) embraced *every* contract, combination, etc., in restraint of trade, and hence that its text left no room for the exercise of judgment but simply imposed the plain duty of applying its prohibitions to every case within its literal language. (221 U. S. 63). The Court, however, read into the act the now familiar rule of reason, the doctrine that only such restraints as were harmful to the public should be condemned. While the Court thus departs from the literal wording of the Act, its construction is an eminently reasonable one, recognizing as it does that a standard of interpretation was contemplated and required, and that the administration of an act framed

in the public interests should not be blind to actualities but should seek only to guard and promote those interests in fact.

The Federal Trade Commission, though now faced with the *Shoe* case (which it seeks to bend in its own direction), nevertheless continues to argue for a blind, harsh and inflexible construction of section 7 of the Clayton Act, and the Court below has found this argument valid. The argument runs substantially thus: section 7, which was passed in the public interest, condemns every corporate stock acquisition the effect of which may be to substantially lessen the competition existing between two or more corporations; therefore, by legislative fiat, any such acquisition is *per se* injurious to the public and illegal and the Courts are without power to inquire into the actual facts. There is a perfect parallel between this argument and that formerly taken by the Government in prosecutions based on the Sherman Act. The argument can have no more validity in the one case than in the other. Consequently, we submit that the decision of the Court below conflicts and is inconsistent not only with the *Shoe* case but also with that standard of legality, i.e., the standard of reasonableness, heretofore held applicable, in numerous decisions of this Court, to the Sherman Act.

In *Appalachian Coals Inc., et al.* v. *United States*, 53 Sup. Ct. Rep. 471, 1933, a case arising under the Sherman Act, an agreement, or combination, between 137 coal producers, under which competition between them would be blotted out, was held legal since no injury to the public appeared. Question was raised as to whether, in attaining their objectives, these companies should not have integrated their properties under one ownership to be within the law. This Court (page 480) held that substance, not form, was the important thing.

In the case at bar, the Circuit Court below regards form, not substance. Ignoring the realities, it finds injury to the public in the machinery of affiliation employed. However, whether a case arises under the Sherman Act or under the Clayton Act, we find the same public, with the same interests, in the background. The position that an affiliation or consolidation injures or does not injure the public according to whether it proceeds by way of a holding company or by way of merger is untenable. It is a matter of common knowledge that a merger is the more sweeping procedure and hence the more likely to affect the public interests in fact. In our opinion, the principles underlying the *Appalachian Coals* decision and the decision of the Circuit Court in this proceeding are irreconcilable.

2. *The decision of the Circuit Court of Appeals below is in conflict with the decision of the Circuit Court of Appeals for the third circuit rendered in* Temple Anthracite Coal Company *v.* Federal Trade Commission, *51 Fed. (2d) 656, 1931; these two courts have reached opposite conclusions upon an important question of Federal law which, even apart from the stated conflict, should be finally settled by this Court.*

The Court below, taking the narrow construction of section 7 of the Clayton Act (15 U.S.C.A., sec. 18) discussed in the preceding topic, i.e., the construction which holds immaterial the absence of actual injury to the public in a given case, holds that the acquisition by one corporation (not solely for purposes of investment) of all or a substantial part of the capital stocks of two or more solvent corporations engaged in commerce and in substantial competition with one another is necessarily and *per se* illegal under the act. Is this a

correct holding? This question, the answer to which is of obvious importance to the business world and to the public generally, is answered in the negative in the *Temple* case. (It should not be inferred that the Circuit Court of Appeals for the third circuit, in deciding the *Temple* case, first considered and accepted the narrow construction of the Clayton law heretofore discussed, —such is not the fact). In the case at bar the contrary conclusion is reached. While the language of the Court's opinion is somewhat obscure, to reach that result the Court must necessarily have derived any guilt now attaching to the petitioner from guilt first attaching to the holding company by virtue of its acquisition of the common stocks of the Arrow and the Hart & Hegeman manufacturing companies.

As to the guilt of the holding company, we recall to this Court's attention the fact that it was formed to acquire, and did acquire, the common stocks of the two companies involved not for the purpose of suppressing the competition which existed between them but for the sole purpose of effecting economies and improvements in manufacture while at the same time preserving the competition described; and that, during the entire corporate life of this holding company, which was from early October of 1927 to early December of 1928, the sales policies and practices of the two manufacturing companies continued as always before, wholly uninfluenced by the holding company. (See Statement in petition, *supra,* pp. 3-4). "Competition", says the court below, "is eliminated where two formerly competing units are brought under one dominating ownership." (65 Fed. (2d), p. 340).

In the *Temple* case, the Temple Anthracite Coal Company acquired substantially *all* of the capital stocks of two coal corporations which were engaged in com-

merce and whose products were apparently 100% competitive. Notwithstanding the power which might reside in the Temple Anthracite Company as a result of this acquisition, the Court found that the competitive situation between the two subsidiaries had not been affected in fact. "The only effect which the ownership may be found to have brought about is the reduction of overhead and operating expense." (51 Fed. (2d) 660). The company was accordingly given a complete acquittance. The Commission did not carry the case farther.

It may be argued that the *Temple* case does not parallel the present case—and hence that the two circuit courts are not in conflict—because in the present case the Court finds that the holding company organized the petitioner and that, under the petitioner, competition between the former Arrow and Hart & Hegeman companies ceased. The argument, however, is superficial. If the holding company did not violate section 7 of the Clayton Act in acquiring the common stocks of the two companies named, then it did not violate it at all; even taking the Court's finding mentioned just above. The chain of events entailing dissolution of the holding company and subsequent formation of the petitioner through merger was not the natural or probable outcome of the stock acquisition complained of,—it was precipitated solely because of the Commission's election to prosecute.

It is the probabilities attending a stock acquisition with which the Clayton Act is concerned. A corporation is forbidden to acquire the stock of two or more corporations in commerce the effect of which "*may be*" to substantially lessen competition, etc. The acquisition is not *per se* condemned as it might have been had Congress been so minded. The Commission it-

self, in its brief to the Court below, framed the issue thus: "Was the *probable* effect of the acquisition of the common stock of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company on October 10, 1927, by the Arrow-Hart & Hegeman, Inc. (the holding company) (a) to substantially lessen the competition * * *" etc.?

Probable effect, naturally, must be determined as of the date of the stock acquisition complained of. Relevant inquiry in such a determination concerns itself with the objective behind the acquisition and the procedure by which this objective is to be attained. Supervening events may also be relevant as an aid in showing what the objective really was and in throwing light generally upon the probable effects of the acquisition. In the *Temple* case, upon facts varying in no important particular from those of the case at bar, the Court found that probable trend towards lessening of competition, monopoly or restraint of trade had not been shown. Should the Temple holding company now actually vote a physical merger of its two subsidiaries (of which it owns substantially all of the capital stock), it is obvious that no prosecution under section 7 of the Clayton Act, regardless of the effect of such merger, would be maintainable,—this act deals only with the legality or illegality of the original stock acquisition; were the merger illegal it would be because the Sherman Act had become involved.

From the foregoing discussion, it is manifest that in the eyes of the Circuit Court of Appeals for the third circuit the stock acquisition complained about by the Commission in the present case was legal. Had the Commission's original complaint (Record, p. 3) come before the Circuit Court of Appeals for the third circuit for decision upon the merits it would have been

dismissed. No other judgment under the *Temple* case would have been possible. The original complaint having been without merit, there could have been no basis for a supplemental complaint joining the petitioner. It is equally manifest, from the decision of the case at bar, that had the *Temple* case come before the Circuit Court of Appeals for the second circuit, it would have been decided in favor of the Commission. Upon parallel facts, it finds the stock acquisition complained about by the Commission in its original complaint illegal,—upon no other theory can it attempt to discover illegality in the petitioner. A corporation located in a circuit other than the second or third which has acquired, or may acquire, stock under the circumstances discussed could now have no means of determining what view its own Court of Appeals would take. The decisions of the two circuit courts are flatly in conflict.

3. *In affirming the order of the Commission which directs the petitioner to divest itself absolutely of physical properties although it never acquired and does not now hold a single share of the capital stocks of either the Arrow or the Hart & Hegeman manufacturing companies, and although such a divestment would be confiscatory not only of the interests of common stockholders but also of preferred stockholders who neither directly nor indirectly were connected with the former holding company, the Circuit Court below has decided important questions of Federal law which have not been, but should be, settled by this Court.*

It is of vast importance to the business world and to the public generally, more especially in these confused times, to know the scope of the Commission's powers under sections 7 and 11 of the Clayton Act (15 U.S.C.A.,

sec. 18, 21). The order entered by the Commission against the petitioner in the present proceeding sweeps far beyond anything thus far sanctioned by this Court. Judge Swan, who dissented to the judgment of the Court below, was of the opinion that the Commission's order exceeded its jurisdiction (65 Fed. (2d) 340), as was Chairman Humphrey of the Commission who also dissented (Record, p. 264-266). We believe the Commission itself would not claim that jurisdiction for its present order can be found in the language of the Act. Most inconsistently, the Commission is in the position of urging a literal, harsh construction of section 7 of this Act while, at the same moment, requesting broad, implied powers under section 11 thereof. The Act, being in derogation of ordinary rights, we should suppose that proper construction of it would limit rather than enlarge its scope.

Under section 11 of the Act the Commission is empowered to order a corporation which has acquired stock in violation of section 7 to cease and desist from such violation by divesting itself of the stock held. (See *supra*, p. 11). The language of the section is no broader than this although in *Federal Trade Commission* v. *Western Meat Company*, 272 U. S. 554, 1926, it was held that, under the circumstances there described, the order directing the offending corporation to divest itself of the stock which it had illegally acquired, and still held, might include a direction to divest itself also of the physical properties which it had acquired through the exclusive use of such stock.

In the present case, the Commission's order (Record, page 261) amounts to a bald direction to the petitioner to divest itself of physical properties. This direction is in no way incident to an order of stock divestment. The petitioner never acquired stocks in violation of section

7 of the Clayton Act; it never acquired, and does not now hold, any share of the capital stocks of either the Arrow or the Hart & Hegeman manufacturing companies. At the time of its incorporation, i.e., December 31, 1928, it acquired the physical properties of these two companies through the fact of absolute merger, not through the use of their capital stocks. These two companies, indeed, ceased to exist coincidently with the merger. In its order, affirmed by the Court below, the Commission not only exceeds the powers conferred upon it under section 11 of the Act but overleaps, in the first instance, the fact that the petitioner never acquired stocks in violation of section 7.

The Commission, it should be understood, does not concede that the petitioner never itself acquired stocks in violation of section 7 of the Clayton law. Obviously conscious of jurisdictional obstacles, the Commission, in paragraph 2 of its order (Record, pp. 261-262), in an evident attempt to avoid the appearance of directing a divestment of physical properties alone, directs the petitioner to divest itself of all common stocks of the Hart & Hegeman company "acquired by it as a result of the merger" of the four companies involved (see *supra,* pp. 4-5) "so as to include in such divestment" the physical properties of this company, or; in the alternative, to divest itself of all common stock of the Arrow company thus acquired by it so as to include in such divestment its physical properties. However, this order, and the finding upon which it is based (Record, pp. 249-250), are so hollow as to be beyond the bounds of legitimate controversy. In the first place, although the common stocks of the Arrow and the Hart & Hegeman manufacturing companies were assets of the two tax companies involved in the merger (see *supra,* pp. 4-5), all four companies so involved ceased legally to

exist coincidentally with this merger. The petitioner, then, never acquired as assets, or otherwise, and it certainly never held and does not now hold, the stocks of the two manufacturing companies,—there can be no such thing as outstanding capital stock of a company which does not exist. In the second place, the petitioner voted no stocks to acquire the physical properties of the Arrow and the Hart & Hegeman companies,—it acquired those physical properties by the fact of the merger which brought it into being. In the third place, this proceeding is not an original one against the petitioner; the original proceeding was against the former holding company, the petitioner having been brought into it by a supplemental complaint. Could the supplemental complaint be regarded as in the nature of an original proceeding against the petitioner, then it is only necessary to point out that it was instituted about six months after the stock acquisition complained of, there having been, in the meantime, a complete physical merger of the properties of the two manufacturing companies involved. The petitioner's position then would be unassailable under *Thatcher Manufacturing Company* v. *Federal Trade Commission*, 272 U. S. 554, 560, 1926 and *Swift and Company* v. *Federal Trade Commission*, 272 U. S. 554, 561.

Further grave question as to the validity of the Commission's order is found in the fact that it ignores the property rights and interests of the preferred stockholders who played no part in the formation, life or dissolution of the holding company. These preferred stockholders, it will be remembered, represented nearly 73% of the capitalization of the old Arrow and Hart & Hegeman manufacturing companies. (See *supra*, page 5). May the Commission enter an order against the petitioner which is confiscatory of the property inter-

ests and rights of its preferred stockholders? In the *Western Meat* case *supra*, p. 24, relied upon by the Commission, it is to be observed, the offending company had acquired *all* of the capital stock of its competitor, the Nevada Packing Company.

4. *The finding of the Commission, affirmed by the Court below, that the former holding company organized the petitioner is untenable as a matter of fact and of general law and is oppressively unjust.*

A well recognized and ancient principle of the common law is that findings of fact must be within the bounds of reason,—if they are plainly unreasonable they ought to be set aside by a court of law. In the case at bar, there is no conflict whatever in the evidence relating to the dissolution of the holding company and the subsequent formation of the petitioner. Furthermore, the evidence on the point, though voluminous and somewhat complex, is both clear and precise. There is no call either to weigh conflicting evidence or to interpret ambiguous or equivocal evidence. The ultimate conclusion as to whether the holding company did or did not organize the petitioner can be arrived at over paths as certain as those of ordinary mathematics. The finding of the Commission, affirmed by the Court below, that the holding company organized the petitioner is plainly wrong. The only possible explanation of the Court's holding, in our opinion, is that it did not fully grasp the demonstrable facts.

The holding company, in order to aid its stockholders in the matter of a Federal taxation, did announce a plan of merger which was followed. Beyond this it did not go. It attempted no *control*. It was quite impossible for the holding company to organize the petitioner. At the time of the merger (i.e. December 31, 1928), which

resulted in the petitioner, the holding company was in dissolution and had been so for some three weeks. The stockholders of the other four companies concerned were, notwithstanding the statement of the Court below, wholly free to merge or not, as they saw fit. Moreover, under the laws of the State of Connecticut, the vote of the preferred stockholders was as necessary to merger as was the vote of the common stockholders, and, as had been said, *supra*, p. 5, the preferred stockholders were in no way concerned with the organization, life or dissolution of the holding company.

Since, as is clear from its opinion, the Court below would have set aside the Commission's order had it concluded that the holding company did not organize the petitioner, the oppressive injustice of an untenable holding in this matter is apparent.

Respectfully submitted,

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Counsel for Petitioner.

August 19, 1933.

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No. 363

In the Supreme Court of the United States

OCTOBER TERM, 1933

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY,
Petitioner.

v.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER:

CHARLES NEAVE,
ARTHUR F. MULLEN,
ARTHUR L. SHIPMAN,
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Jan. 13, 1934.

THE CASE, LOCKWOOD & BRAINARD CO.
HARTFORD, CONN.

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CORRECTION

This brief has been reprinted to correct typographical errors on pages 4, 28 and 52. Otherwise the brief is the same.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY, *Petitioner* v. FEDERAL TRADE COMMISSION, *Respondent*	No. 363

BRIEF FOR PETITIONER

This proceeding comes before this Court on a writ of certiorari to the Circuit Court of Appeals for the Second Circuit which acted upon a petition to review an order to divest issued by the Federal Trade Commission under the last paragraph of Section 7 of the Clayton Act.

The Circuit Court of Appeals delivered two opinions. The first opinion relates to two motions and is reported in 63 F. (2d); 108; R. 1056. The second opinion (Judge Swan dissenting) directs itself to the merits of the case and is reported in 65 F. (2d) 336; R. 1060.

The order of the Federal Trade Commission is at R. 261, and Chairman Humphrey's dissent is at page 264.

JURISDICTION

The writ of certiorari was filed and issued under Section 240 (e) of the Judicial Code as amended by the Act of February 13, 1925 (28 USCA sec. 347) and in accord-

ance with Section 350 of that Code and Article 38 of the Rules of this Court.

BRIEF STATEMENT OF THE CASE

This is a proceeding by the Federal Trade Commission alleging violation of section 7 of the Clayton Act (15 USCA, sec. 18), the pertinent paragraph of which section reads:

> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The petitioner is a Connecticut corporation formed on December 31, 1928 by the merger of two small manufacturing companies in Hartford, making small electrical apparatus generally classed as "wiring devices" such as lamp sockets, plugs, switches, receptacles, wall plates, shade holders, etc. It has no monopoly or control of the business and indeed there are some 70 competitors, several of them being the largest electrical manufacturing companies in this country.

Of course, if there was anything objectionable about the merger, the Department of Justice is the one to complain under the Sherman Act—not the Federal Trade Commission under the Clayton Act.

But the Commission seeks to assume jurisdiction here (a jurisdiction which was denied by Judge Swan in his

dissent, R. 1067) because of the history preceding the merger.

That is, during a period of fifteen months immediately preceding the merger there was a company which held all of the common stock (but none of the preferred) of the two manufacturing companies. The Commission issued a complaint against that holding company. Before any proceedings were taken under the complaint and with the intention of removing all possible grounds of criticism and of avoiding litigation, the holding company was dissolved and the two manufacturing companies were returned to their original status. Then, and still before any proceedings under the complaint, the two manufacturing companies were merged to form the petitioner.

The Federal Trade Commission was notified and made no objection or protest until five months later when it filed a supplemental petition bringing in as a party the present petitioner, namely, the company resulting from the merger.

The Commission's order is against the merger company only. It requires the petitioner to divest itself of the common stock of one or another of the manufacturing companies (which stock it never owned) and divest itself of the manufacturing plants and properties of one or the other of the manufacturing companies. That order was entered over Chairman Humphrey's vigorous dissent. (R. 264).

It is unquestionably true that prior to the time when the holding company was formed to acquire the common stocks of the two manufacturing companies, those two companies might lawfully have merged (as they did later) so far as concerns the jurisdiction of the Federal Trade Commission.

Was that right of merger lost by reason of the fifteen months' existence of the holding company during which period there was no monopoly, restraint of trade, lessening of competition or injury to the public, particularly when the common stocks of the manufacturing companies, acquired by the holding company, were not voted by that holding company, nor by anyone or any company controlled by it, in effecting the merger?

Before coming to a consideration of the facts in detail, it should be understood that the petitioner has no substantial quarrel with the Commission's findings of fact, so far as they go. There is no real dispute as to the basic facts. The findings of the Commission are, however, inadequate as they omit various of the pertinent facts and only half state others; so they may well lead to erroneous conclusions.

It is well settled that while the Commission's findings of fact, if supported by evidence, are conclusive, the Courts may take into consideration as decisive of the controversy "certain material facts not covered by the findings" (*James S. Kirk & Co.* v. *Federal Trade Commission,* 59 F. (2d) 179, 181), and inquire as to "whether there are certain material facts not reported by the Commission" (*Federal Trade Commission* v. *Curtis Co.,* 260 U. S. 568, 580). And in any event it "remains the duty of the supervising court to determine whether the facts found are such as to warrant the conclusion that the effect of the acquisition of the stock of the two corporations is or may be to substantially lessen competition between them" (*Temple Anthracite Coal Co.* v. *Federal Trade Commission,* 51 F. (2d), 656 (CCA 3).

STATEMENT OF FACTS

The Manufacturing Companies:

The two manufacturing companies, above referred to, were The Arrow Electric Company (which we shall call Arrow) and The Hart & Hegeman Manufacturing Company, (which we shall call Hart & Hegeman).

Both Arrow and Hart & Hegeman had long been manufacturing electrical wiring devices. Each marketed its product nationally, the former under the "Arrow" brand, or trademark, and the latter under the "H. & H." brand, or trademark. While both companies manufactured a general line of electrical wiring devices—i.e., sockets, receptacles, attachment plugs, heater plugs, switches, wall plates, rosettes, shade holders and small accessories—Arrow emphasized, and had a reputation in the trade for, its *socket* line whereas Hart & Hegeman emphasized its *switch* line and was thought of by the trade in general as primarily a switch manufacturer. In addition, Hart & Hegeman, unlike Arrow, manufactured and sold a special line of current control devices, known as "appliance material", for use by other manufacturers in the construction of machinery and electrical appliances, e.g., radios, vacuum cleaners, refrigerators, gasoline pumps, electrical tools, motor operated machinery and the like.

From the standpoint of marketing, the product of Hart & Hegeman was divided into two main classes, namely, "appliance material" and "shelf goods". The product of Arrow came under the sole heading of "shelf goods", that is, those items composing the general line of wiring devices which are ordinarily stocked and distributed by electrical supply distributors. This material is of a standard type and is packed in suitable units for resale, and

it is described in the manufacturer's regular catalogue listings. It is used chiefly in connection with the electrical wiring circuits of buildings and with power or lighting circuits and fixtures generally; hence it was marketed through jobber and contractor channels so as to be everywhere available to the consumer. (R. 310-311).

On the other hand, "appliance material", which was made by Hart & Hegeman and not by Arrow, is not intended for resale, is seldom catalogued, as it is manufactured for a specific purpose, frequently being designed to order or made to the specifications of the purchasing manufacturer who incorporates it into his product as an integral part thereof. The appliance business of Hart & Hegeman was very profitable and year by year had been growing in relative importance. (R. 284, 362-364, 540-544).

With respect to their shelf goods, the two companies were in competition. It appears, however, from the 1927 figures (the only ones introduced into evidence), that 41% of the total business of Hart & Hegeman was not competitive with Arrow's business. (R. 238, 559-560).

At the time of the merger each company was doing an annual gross business of roughly $4,000,000. We give below the exact figures for six and one-half years. These figures also include the post merger period of 1929, 1930 and the first six months of 1931, this being made possible because of the operation of the new company under two separate sales divisions, the "Arrow" and the "H. & H.". (R. 904, 927-928, 963-964).

	Arrow	*Hart & Hegeman*	*Sales of whole industry*
1925:	$4,392,000	$4,242,000	
1926:	4,012,000	4,153,000	
1927:	3,849,000	4,537,000	$32,703,331
*1928:	3,537,000	4,378,000	
1929:	3,584,000	4,599,000	43,120,095
1930:	2,987,000	3,469,000	
1931 (6 mos.):	1,271,000	1,418,000	

Figures for the sales of the whole electrical wiring industry were not available for the year 1928. Those for 1927 and 1929 are from the census figures of the Department of Commerce, which are compiled every other year, and 1931 figures were not available when the evidence was taken. It will thus be seen that in 1927 the combined "Arrow" and "H. & H." business amounted to a fraction over 24% of the total electrical wiring device business of the country and that in 1929 it amounted to less than 19% thereof. (R. 872, 875, 902, 904). The actual trend, as the above figures show, has been away from monopoly.

"Arrow" and "H. & H." products have long been and still are faced with competition of the most formidable order; it is inconceivable that those companies could ever have monopolized the electrical wiring device industry no matter how hard they should try.

Among rival manufacturing concerns in this field are General Electric Company, Bryant Electric Company (a subsidiary of Westinghouse Electric and Manufacturing Company), Pass and Seymour, Incorporated, Harvey Hubbel, Incorporated, Cutler Hammer, Incorpo-

*There is some conflict in the record as to the 1928 sales of Hart & Hegeman. At page 928 thereof, the petitioner's treasurer after having previously testified to the above figure (page 837), gave the 1928 figures as $4,478,000 instead of $4,378,000. The clear weight of evidence, however, supports the latter figure. The difference is, in any event, immaterial.

rated, The Weber Electric Company, Paulding Company and Circle F Manufacturing Company. Each of these companies manufactures and sells nationally a complete line of electrical wiring devices. The first two companies named of course have at their command virtually unlimited resources. In addition to these rival companies, there are a great many others which manufacture and sell nationally limited lines of electrical wiring devices. The fact that a given company does not manufacture a complete line does not indicate that it is insignificant as a competitor. For example, the Leviton Manufacturing Company, which does not have a complete line, nevertheless is the largest manufacturer of sockets in the United States. Again the Alcor Manufacturing Company and the Beaver Company are large manufacturers of switches and plugs, and the Standard Manufacturing Company of Chicago is a large manufacturer of switches. In early 1929 it was estimated that there were nearly seventy companies in this country which manufactured some, or all of the wiring devices manufactured and sold by the petitioner. (R. 875-878, 691-693, 703, 705, 716-718, 725-727, 732-737, 792-795, 813-815, 818, 821, 881, 893, 896, 904-906, 910-917, 923, 924).

Arrow and Hart & Hegeman had a legal right to merge at any time. They had that right in the forepart of the year 1927 and before but, according to the Commission, they did not have it on December 31, 1928—the actual date of the merger—because in October of 1927 a corporation, Arrow-Hart & Hegeman, Incorporated (which we shall call the holding company) was organized to acquire, and did acquire, the common stocks of these two companies. It is the Commission's contention that this acquisition was illegal under Section 7 of the Clayton Act, that such claimed illegality was never purged and

that it somehow carried through to the petitioner, thus giving the Commission a jurisdiction, which it otherwise would not have had, over the petitioner and the power to rend apart the merged corporation. Thus it becomes necessary in this statement briefly to recite the significant facts concerning the formation, life and dissolution of the holding company.

The Holding Company:

The holding company was incorporated in Connecticut in October, 1927, and acquired the *common* capital stocks of Arrow and Hart & Hegeman—the same companies which subsequently merged. It never acquired any of the preferred capital stocks of either of these two companies. (See Commission's Exhibits 68-71, giving lists of preferred stockholders at October 10, 1927 and December 31, 1928. R. 938). When the holding company was organized the issued capital stocks of Arrow and Hart & Hegeman were as follows: (See Findings, R. 231-236).

	Common (par $25)	*Preferred (par $100)*
Arrow	$750,000	$2,000,000
Hart & Hegeman	500,000	1,333,300

Thus nearly 73% of the capitalization of each company was represented in preferred stock. No merger could be voted without the concurring vote of at least two-thirds of the preferred stock. General Statutes of Connecticut, Exhibit J, (R. 219). The preferred stock of both companies was held widely by the general public, the total number of preferred stockholders for the two companies combined being in the neighborhood of one thousand. (Com. Exhibits 68-71, *supra*).

The sole purpose in forming the holding company was to work out a manufacturing affiliation between the two companies. The holding form of company, rather than an outright merger, was advocated since it seemed best calculated to achieve a satisfactory manufacturing affiliation between the two operating companies while at the same time leaving the competitive situation wholly untouched. (R. 440-441; Com. Ex. 17, 18).

The goal of the organizers of the holding company, who were the common stockholders of the two manufacturing companies, was the achievement of manufacturing economies through pooling of engineering and executive talent, through increased volume of production, through elimination of many duplicating and other wasteful operations and, in general, through higher standards of efficiency; their goal was not the stamping out, or lessening, of competition between these two companies. (R. 311-312, 347-350, 354-359, 562, 693, 728-738, 792-795. Com. Ex. 18). Important as was the attainment of economies in an industry where competition was constantly becoming stronger, it was equally important, indeed far more important, for Arrow and Hart & Hegeman to preserve the good will inherent in their two brands, "Arrow" in the one case and "H. & H." in the other, which had been used on their respective goods for many years and had thereby acquired enormous proprietary values. The product of either company would have had little meaning—would have stood little differently from that of a new manufacturer in the field—divorced from its characteristic brand, or trademark. By years of intensive cultivation Arrow had achieved a wide and established market for "Arrow" electrical wiring devices; it could count on no market for unmarked goods, or for goods with other labels, which it might set out

to manufacture. So with Hart & Hegeman. To preserve the value attaching to these brands, it was deemed not only wise, but essential, in order to preserve also the competitive situation existing between the two companies, to preserve intact the two sales organizations each of which would push its brand of goods as before. The holding form of company was particularly well adapted to this objective. This is shown by three classes of testimony,—the testimony of our own men, the testimony of our biggest competitors and the testimony of jobbers. The testimony of our own men appears in R. 340-341, 359-362, 370, 374, 440-441, 443-447, 449-450, 477-478; 539, 792-793, 802, 809-819, 870. The testimony of our competitors, General Electric Company and Westinghouse, appears in R. 691-750. The testimony of jobbers appears in R. 568-581, 593-676, 967-998, 1007-1030.

Actual affiliation of the two companies had its roots in the sudden and unexpected death in February 1927 of the President of Hart & Hegeman. He had been a dominating figure in his company, having kept a close and personal control of its operations. All officers and departments reported directly to him; under him the company could aptly be termed a "one man concern". He and his family owned more than a majority of the common stock of the company. The loss of the president left his company without an assured position in the industry. Although his successor was an able man in financial matters and in sales promotional work, he was not a manufacturer. (R. 350-354).

In view of the situation stated, the president's widow and her advisers decided that, for the best interests of herself and family, their stock should be sold, protection, however, to be extended as far as possible to the employees

and friends who had supported the president in his enterprise. Pursuant to this decision, endeavors were made for several months to find a suitable purchaser for the Hart & Hegeman stock. Although there were diligent efforts to find such a purchaser, no satisfactory offers were received. (R. 352-354).

In July of 1927, and for the first time, informal negotiations were opened between the two manufacturing companies. These culminated in a plan for an affiliation between the two companies through the incorporation of the holding company. The incorporation was as of October 1927. The capital structure of the holding company was $2,000,000 divided into 200,000 shares of one class of stock of the par value of $10 each.

In the latter part of August 1927, both Arrow and Hart & Hegeman sent out letters to their distributors, or jobbers, announcing the new affiliation. The letters of each company were identical in substance and, for the most part, in wording. The Arrow letter was as follows (Commission's Exhibit 18):

"August 25, 1927

"We have just carried through a plan by which the Arrow Electric Company and the Hart & Hegeman Manufacturing Company, both of which as you know have their headquarters in Hartford, are united in the operation of their manufacturing plants.

"This consolidation is expected to be very advantageous for all concerned and we not only feel that you will be interested in receiving early word from us about it, but we want you to get this information direct and not from some possibly unreliable source.

"While cooperating for factory efficiency the companies will continue under separate management and control, with the personnel as at present. It is in the matter of production economy that we aim to realize chiefly the benefits of the consolidation.

"We do not intend to make any changes in respect to the individuality of products. Arrow material will remain Arrow and H. & H. material will remain H. & H.

"We emphasize the fact also that the action does not in any way affect or alter Arrow sales policies. We shall be in active competition with the entire field, for the retention of our present business and acquiring new trade through our sales endeavors. In pursuance of this plan it will not be practicable for us to furnish H. & H. material to our distributors and naturally the reverse is true, that Arrow material will be available only to Arrow distributors.

"We believe these are the only questions which are likely to be of particular significance to you as friends and distributors of Arrow, but if others occur to you we shall be glad to reply to any inquiries. It will be considered a favor if you will give this information to your salesmen and others in your organization where you think it advisable. They will thus be in position to correct any false impressions or misstatements regarding the affiliation.

"Very truly yours,

THE ARROW ELECTRIC COMPANY,

EDWARD R. GRIER,

Vice President."

The life of the holding company was from the date of its incorporation in the early part of October, 1927, to the early part of December, 1928, when it distributed all of its assets, which were the common stocks of the manufacturing companies, and voted itself out of existence.

It is at this point in the Record that we stress particularly the inadequacy of any findings by the Federal Trade Commision as to the conduct of the holding company. With the exception of a brief statement in the first paragraph of Paragraph Sixth of the Commission's Find-

ings (R. 252) there is nothing whatever in their Findings which indicates the manner in which the business of the manufacturing companies was conducted during the period of the holding company, that is, from October 1927 to December 1928. Commencing with the second paragraph of Paragraph Six, at the foot of Page 252, the Commission discusses the period of the merger which took effect January 1, 1929. No differentiation is made between those two periods and there are no findings whatsoever on the point we now discuss.

The Commission, in its brief in the Circuit Court of Appeals, under the heading of "Suppression of Competition" after the holding company was formed, stated that "during the first few months after October 1927", the date of formation of the holding company, "no change was made in the sales policies of the two manufacturing companies, although they were controlled by" the holding company, but that various economies and improvements, to which we have referred above, were effected. Then the brief stated that "on or about January 1, 1930, however, very substantial changes took place in the sales organizations of the two operating companies". But that was *not* during the period of the holding company; the company then in existence was the one resulting from the merger. No facts were found by the Commission upon which could be based a conclusion that there was any suppression of competition by the holding company. So we may take it that there was no lessening of competition under the holding company.*

*We tried, without success, to have the findings of the Trial Examiner on these points certified as a part of the Record in the Circuit Court of Appeals. The Commission took no exception to the Trial Examiner's Report. All reference to it is stricken from the record on the objection of the Commission that it is entirely irrelevant to these proceedings. This is the subject matter of the first opinion by the Circuit Court of Appeals (R. 1056) 63 F. (2d) 108.

During the corporate life of the holding company, the sales policies and practices of each of the manufacturing companies were not changed or modified in any respect; the holding company, whether by its stockholders, officers, employees or agents, in no way sought to direct nor did it direct the sales policies or efforts of either of the two manufacturing companies. Each of those companies maintained the same staff of officers it had before their common stocks were acquired by the holding company; each continued and increased its own sales force. During this period neither Arrow nor Hart & Hegeman instructed its salesmen to avoid securing business at the expense of the other company. To the contrary, each company put increased pressure upon its salesmen to get business wherever it was to be had. (R. 340-341, 359-362, 368-370, 443-447, 449-450, 477-478, 481-482, 538-540, 684-685, 692-694, 713, 720-729, 792-793, 808-819, 942-943; Com. Ex. 18; Petitioner's Ex. 32. See also testimony of Jobbers called by Commission. R. 568-581, 593-676; 976-998, 1007-1030).

Such competition as existed between the two companies was stimulated by the formation of the holding company, —each manufacturing company was on its own to make a creditable showing and each tried harder than ever to outdo the other. Each salesman was judged upon the business he secured regardless of its source. He had no incentive whatever not to take business from the other company; rather, due to pride of organization and often to jealousy, as well as to expected remuneration, he had positive and personal incentive to secure business whatever might be the effect upon the other company. The officers of both companies considered that the absolute independence in sales efforts of the two companies was sound business and the only means whereby the tremen-

dous good will value attaching to the respective "Arrow" and "H. & H." brands could be kept alive. (See citations to preceding paragraph).

During the life of the holding company, the manufacturing companies were wholly separated; they had separate offices and plants; they had no identity in directors, officers or employees; their books, records and files were kept separately. (R. 348-361, 441-449).

After the organization of the holding company, however, no time was lost in putting into effect a programme looking to economies and improvements in manufacture (that having been the purpose of the affiliation) which were made possible through the greater use of mass production, through the elimination of many wasteful methods, through the pooling of engineering talent and through increased manufacturing efficiency in general. It is estimated that the major economies for the year 1928, made possible by the affiliation amounted to upwards of $442,000; many other economies, intangible in nature and incapable of measurement in dollars, were also doubtless realized in that year. Still other economies were in process at the time of the dissolution of the holding company. (R. 311-312, 347-350, 440-447, 561-562, 750-788, 835-858).

The programme of economies and improvements was carried out between the two operating companies, as well as all dealings between them in the period involved, upon a strictly business basis. (R. 348-350, 360-361). There is, for example, the matter of the economy achieved in the manufacture of socket, attachment plug and receptacle material, which economy amounted to upwards of $282,000 for the year 1928. (R. 847-848). Hart & Hegeman had been primarily a manufacturer of snap switches and allied articles such as wall plates. In order, however,

to be able to offer a complete line of electrical wiring devices to the public it had acquired the output of a company, namely, the H. T. Paiste Company of Philadelphia, which primarily manufactured socket, receptacle and attachment plug material. (R. 962). At the time of the formation of the holding company, Hart & Hegeman owned the capital stock of the Paiste Company. While the addition of the Paiste product to its own gave Hart & Hegeman its desired full line of electrical wiring devices, this product never worked satisfactorily. The entire Paiste line yielded Hart & Hegeman no profit; moreover, it was a line which failed to measure up to the excellent standards of the "H. & H." switch line. Following the formation of the holding company, then, the Paiste plant in Philadelphia was discontinued. Much of the Paiste Company's machinery, equipment and inventory was bought by Arrow at a fair price, i.e. book value. Arrow had been primarily a manufacturer of sockets, receptacles, attachment plugs and closely allied articles, —it was in this field that it had been particularly successful. (R. 347, 365, 750-751). Thereafter, Arrow manufactured for and sold to Hart & Hegeman, at a reasonable price, its needed supply of sockets, receptacle and attachment plug material. Under this arrangement, both companies were able to realize substantial benefits. (R. 563-564, 792-793, 803-814).

The programme of economies and improvements referred to called for some interchange of employees between the two companies, but where an employee was lent from one company to the other his time was paid for by the borrowing company. In short, as we said above, all transactions between the two companies were on a business basis, a fact which the Commission carefully omitted to state in its Findings (Par. Six) describing some of those transactions.

As in the case with the later formation of the petitioner, the formation of the holding company not only was not injurious to the public interest, but, on the contrary, was beneficial to it. (R. 348-350, 700-706, 730-732, 750-788, 792-798, 827-828, 835-858, 964-966; petitioner's physical exhibits 1-28). By virtue of economies and improvements in manufacture realized, substantial reductions in prices and improvements in quality were made possible, and many others were in prospect. Moreover, the opportunities for pioneering research work were greatly augmented through the cooperation of the two engineering departments.

Further, as a result of the affiliation the lines of both companies were strengthened. Thus, the "H. & H." line was strengthened in respect to sockets, receptacles, attachment plugs and allied articles, while the "Arrow" line was strengthened in respect to its switches and allied articles, and, as a consequence, the salesmen of each line were enabled to compete more effectively against one another as well as in the field generally. (R. 792-795, 813-815, 821).

Dissolution of the Holding Company:

The original complaint in this action, charging the holding company with a violation of section 7 of the Clayton Act because of its acquisition of the common stocks of the two manufacturing companies was issued on March 3, 1928. In an appearance before the Commission's Board of Review, the holding company unsuccessfully sought a dismissal of this complaint. It then became apparent that; regardless of the legality of the company's position—in which it thoroughly believed—long, costly litigation, very disturbing to business, was in sight. (Com. Ex. 43).

To those in interest, this was regarded as an intolerable situation, especially because it seemed that the *mechanism* of affiliation rather than the affiliation itself was under fire—an original merger, for example (a step more drastic than the formation of a holding company), would have been legal—and a continuance of this situation, in addition to the cost and embarrassment involved, would only have jeopardized, and at the very least delayed, the two companies in working out their problems along such unquestionable lines as they might wish to choose.

It was decided, therefore, to dissolve the holding company and to distribute its assets. Since the alleged guilt of this company lay in its acquisition of the common stocks described, it seemed obvious that the procedure determined upon would purge whatever guilt there possibly could be and, at the same time, put an end to a harassing prosecution, the basis for which would be gone.

Accordingly, the Board of Directors of the holding company at a meeting held November 10, 1928, unanimously passed the following vote (R. 60):

> "*Voted:* That the corporate existence of this corporation be terminated and that a special meeting of the stockholders be called to be held December 10, 1928 to confirm this vote."

On the same day, a call of a special stockholders' meeting for December 10 to confirm the above vote, to authorize the directors to distribute the assets of the corporation in such manner as they might determine and to transact any other business proper to come before such meeting was sent to each of the stockholders (R. 60) together with an explanatory letter from the president and vice-president and a form of proxy and consent (R. 61). In the letter referred to, the president and vice-president

said, among other things, that the entire assets of the corporation consisted in shares of the common stocks of Arrow and Hart & Hegeman which, it was expected, would be distributed so that each stockholder would receive shares of the common stock of either one or both of the said companies; also they stated their belief that, upon distribution of the corporation's assets, the directors of Arrow and Hart & Hegeman would propose to their respective stockholders an agreement of consolidation of these two companies, pointing out that much progress had been made in efficiency and economy through the organization of the holding company and that more, in their opinion, could be accomplished by actual merger and consolidation of the two companies. Exhibit A. (R. 60-62).

For the purposes of deciding the issues of law involved, we believe that the dissolution of the holding company, along with a distribution of its assets, and the later formation of the petitioner through merger can be treated as if the steps in contemplation, set forth above, had actually been taken directly. They were, however, for tax purposes, taken through the formation of two other companies which, in order to avoid confusion of names, we shall call the "tax companies."

The Tax Companies:

Between November 10, 1928 and December 10, 1928, the date set for the stockholders' meeting of the holding company, its directors were informed by counsel that the proposed distribution to its stockholders, of whom there were some nine hundred and fifty, might involve them with the Treasury Department of the United States in the matter of large claims for income tax. Because of this possibility, the advice of one of this country's leading tax

authorities, was sought. He advised against the plan of dissolution proposed and, in lieu thereof, and for tax purposes only, suggested a plan of dissolution and subsequent merger which, if followed through, would be regarded by the Treasury Department as a general reorganization within the meaning of the Income Tax Law. His suggested plan was the one actually followed. (R. 135, 63, 943-944).

In essence that plan contemplated the formation of two "tax companies" one by Arrow and one by Hart & Hegeman. To the Arrow tax company all the shares of the common capital stock of Arrow, then held by the holding company, would be transferred and, in consideration for this transfer, that tax company would issue all of its own capital stock to the stockholders of the holding company. Likewise to the Hart & Hegeman tax company would be transferred all the shares of the common capital stock of Hart & Hegeman, then held by the holding company, and, in consideration for this transfer, that tax company would issue all of its own capital stock directly to the stockholders of the holding company. These stockholders would thus receive not a distribution in kind of the assets of the holding company but the stock of the two tax companies.

This having been done, the holding company would have no assets and no reason for continued existence; accordingly, it would be at once dissolved. There would then be left four corporations, namely, the two manufacturing companies and the two "tax" companies, who might do what they chose. (R. 63-66).

At a special meeting of the Board of Directors of the holding company on November 30, 1928 (R. 135) the plan of reorganization above outlined was presented by the president, and it was there voted to submit this plan

to the company's stockholders for consideration and adoption at a special meeting to be called for December 6, 1928. On December 1, 1928, the call for this special meeting was sent out together with a form of power of attorney, consent and proxy and also with an explanatory letter signed by the president and vice-president (R. 63). At this special meeting the plan for reorganization, described above, was approved (R. 68). The transfer of the corporation's assets to the two tax companies followed,—the common stock of Arrow going to the Arrow tax company and the common stock of Hart & Hegeman going to the Hart & Hegeman tax company. (R. 144-146, 186-190, 798-800, 878-881; Com. Ex. 45, 46, 48; Petitioner's Ex. 29, 30, 32, 42).

On December 10, 1928, at a special meeting of the stockholders of the holding company, it was voted, in confirmation of the directors' recommendation, to terminate its existence (R. 76-78); on that date a preliminary certificate of dissolution was filed with the Secretary of the State of Connecticut and notice of such dissolution was advertised as required by law. (Petitioner's Exhibit 32; R. 959; Com. Ex. 57, 58).

From and after December 6, 1928, the day on which the holding company divested itself of all of its assets, it had no power of any description over the two manufacturing companies, or over the two tax companies which were then wholly free and independent companies subject to no commitments for future affiliation or otherwise; the holding company, before dissolving, and solely to meet a tax situation, had recommended a method of non-taxable reorganization, involving ultimate merger between the two companies named, and had taken such preliminary steps as were deemed essential to make such a non-taxable reorganization possible; it had not, how-

ever, directed a merger nor did it have the power to do so,—any ultimate merger rested solely in the hands of the stockholders of the companies concerned, including the holders of the preferred stocks. (See petitioner's Exhibit 32 which is the complete corporate record of the holding company. R. 942-944).

The Merger:

Under an agreement of merger or consolidation (R. 200-217) on December 31, 1928, the merger took place and this petitioner came into existence. Neither of the manufacturing companies had considered it or had taken action upon it until *after* the holding company had distributed all of its assets (December 6, 1928) and gone into dissolution (December 10, 1928). The merger, in conformance with Connecticut legal requirements, was effected as follows:

On December 11, 1928, the Board of Directors of each company (other than the holding company which was then dissolved) approved and signed individually the form of merger agreement and ordered a special stockholders' meeting for the purpose of considering that agreement. Stockholders' meetings for each of the four companies were held on December 31, 1928. The merger agreement was approved by each and thereupon, after proper certification to the Secretary of State, the merged corporation came into being. (Exhibits E to J, both inclusive, R. 83-220, 800, 879, 951-952, 958-959).

The holders of the preferred stocks of Arrow and Hart & Hegeman, which constituted nearly 73% of their total capitalization, were in no way concerned with the organization or dissolution of the holding company, or with the formation of the tax companies, or with the transactions involving those companies. They were given no notice of

any of these matters and they had no notice of the proposed plan of merger until the call for the stockholders' meeting of December 31, 1928, which was sent out on December 11 of that year. Under Connecticut law (R. 218) the merger could not have been effected without the concurring vote of at least two-thirds of the preferred stock of Arrow and Hart & Hegeman. This fact (along with the facts recited in preceding paragraphs) is important in examining the validity of the Commission's conclusion that the holding company formed the petitioner. (R. 200-217, 938-939; Com. Ex. 52, 53, 56, 70, 71, 77; Petitioner's Ex. 29, 30, 32).

On January 11, 1929, counsel wrote a letter to the Commission (R. 221) informing it of the dissolution of the holding company, and of the subsequent incorporation of the petitioner. *From the time of the receipt of that letter until the filing of the supplemental complaint on June 29, 1929, no objection or protest of any kind was received from the Commission or from its Counsel as to the events which had transpired.* (R. 221-222, 950-951).

On April 11, 1929, the Trustees in liquidation of the holding company filed the final certificate of dissolution with the Secretary of State of Connecticut (R. 81). Under the law, such final certificate could not be filed until four months had expired from the filing of the preliminary certificate, this being the time allotted for the presentation of claims to the Trustees. During this period of time no claims were presented. (R. 81).

Before the merger took place the essential facts were laid before the Department of Justice of the United States to determine whether or not it would find it objectionable under any of the anti-trust laws. While the Department was unwilling to foreclose itself from pos-

sible future action, it nevertheless, upon the facts presented to it, found no illegality in the proposed merger. (R. 945-948; Petitioner's Ex. 35, 34).

Immediately following the merger resulting in the creation of the petitioner, a general and physical consolidation of offices, plants, equipment, records, general assets, etc., took place. However, still intent upon preserving the "Arrow" and "H. & H." brands of goods—the very life of the company largely hinging upon the good will values attaching to these two brands—the sales organizations were, and today are, organized into the Arrow Division and the H. & H. Division. Each Division has its own salesmen. There is an Arrow catalogue and an H. & H. catalogue. While there is now one general sales manager for the company, and while there are now joint branch sales managers, the actual selling of the petitioner's products with unimportant exceptions, is in the hands of "Arrow" salesmen and "H. & H." salesmen who sell their respective brands of goods in competition with one another and in precisely the same manner which had prevailed before the merger and for many years prior thereto. The exceptions referred to involve four small territories, one of them Connecticut, also Springfield, Massachusetts (just over the Connecticut line), wherein joint salesmen operate, that is, one salesman for each territory. Special considerations, not typical of the business otherwise, gave rise to these joint salesmen. Omitting discussion of Connecticut, which presents only an *intra* state question, the principal reason for combining salesmen in the other three territories was one of economy. The petitioner could not afford two salesmen in each of these territories; it is only by virtue of joint salesmen that the "Arrow" and "H. & H." brands can be pushed there at all. In any case, the amount of busi-

ness produced by all of the joint salesmen (including the Connecticut salesman) has been in the small ratio of approximately 3.3% to the total business of the company. (R. 859-862, 965-966).

The merger worked no injury to the public. There is no evidence in the Record, nor does the Commission find, that it did. On the contrary, overwhelming and undisputed evidence shows that this merger has affirmatively benefited, and will continue to benefit, the public. (See record citations on this point; *supra,* p. 18).

As a result of the merger, the petitioner has been enabled to offer a substantial portion of its articles of manufacture to the public at progressively lower prices; to improve the quality of a substantial portion of these articles without raising the price, improvement in quality having chiefly to do with safety factors, increased efficiency, better design, etc.; with respect to many articles, to reduce prices while at the same time materially improving quality; to build up an engineering department which, for original experimentation and general excellence of work, has no superior in the country; and to continue a distribution of "Arrow" and "H. & H." products in certain territories to which one or both of these brands might otherwise have been lost. Huge economies, the pooling of executive, technical and engineering resources, increased efficiency generally and the extended application of mass production methods, all made possible by the consolidation of the two companies, are responsible for these benefits which the public have reaped. (See paragraph Eighth of Finding, R. 256-258; also R. 700-706, 730-732, 750-788, 964-968).

Upon the foregoing facts, there never was and is now no basis for the Commission's prosecution of the petitioner under section 7 (or under any section) of the Clay-

ton Act, nor for its Order against the petitioner. Even if the public had been injured, even if competition in the industry had been threatened and, indeed, even if an actual monopoly had arisen, this would still be true. The Clayton Act does not apply to mergers.

The Findings of the Commission:

As we said at the outset, there can be no real dispute about the underlying facts of the case. An examination of the entire record will disclose, we believe, no substantial conflict in evidence. Our chief complaint against the Commission's Findings is that they are inadequate and misleading in that they omit major facts indisputably established by the evidence and in that they only half-state still other facts so as to lead the reader to erroneous or inadequate conclusions.

It is clear that, as we stated above (p. 4), the Courts may and do take into consideration, as decisive of the controversy, "certain material facts not covered by the findings" and enquire as to "whether there are material facts not reported by the commission".

A few instances will illustrate the lack of completeness of the Findings.

In Paragraph Seven (R. 255-256) it is found that "the total volume of sales of both the said Arrow Electric Company and the said Hart and Hegeman Manufacturing Company during 1927 was in excess of 25 per cent." (incidentally an overstatement) "of the total volume of sales of all manufacturers of electrical wiring devices of all descriptions during that year", but no mention is made of the fact that in 1929 the combined percentage of these two companies had dropped to less than 19% of the industry. (See *supra*). (R. 872, 875, 902, 904).

The first sub-paragraph of Paragraph Six (R. 252) has obviously been framed to create the impression that during the life of the holding company competition between the two operating companies was suppressed or at least substantially affected. Close analysis of the statements made by no means dictates this conclusion (but only the conclusion that economies were effected) but the making of them could hardly have had any other relevant purpose. In what it omits to state, however, the Commission is even more gravely at fault. This one sub-paragraph is the only part of the Finding which deals with the situation during the entire corporate existence of the holding company, from October 1927 to December 1928, yet it discloses nothing of the situation as it then existed. In the face of abundant and uncontroverted evidence upon this subject, it omits to state that all of the transactions between the operating companies referred to in the paragraph were conducted on a strictly business basis; that the holding company was not formed for the purpose of influencing competition but rather to achieve a manufacturing affiliation between the two operating companies; that during its life the separate organizations of these two operating companies, as they had always existed, remained intact; and that the holding company never took action to direct or control the sales policies of the two operating companies; that, in short, competition during the life of the holding company not only continued unabated but, if anything, was intensified. (See *supra*, pp. 12-16).

In this same sub-paragraph the Commission's statement that Mr. Grier and Mr. Williams were authorized to vote all of the shares of stock of the two operating companies, while of no great moment, is misleading, as its own Exhibit No. 39 shows. Mr. Grier, vice-presi-

dent of Arrow and/or Mr. Perkins of that company were authorized to vote *its* common stock while Mr. Williams, president of Hart & Hegeman and/or Mr. Gross, counsel for that Company, were authorized to vote *its* common stock,—in other words, the real point of the whole proceeding was that the holding company took especial care to leave the management of the two operating companies to their own officers.

Further in the same Paragraph Six, it is found that under the petitioner, resulting from the merger, during the years 1930 and 1931 (an incorrect statement as to 1930) joint salesmen of "Arrow" and "H&H" were employed in certain territories, but the special reasons for their employment and the small extent of the business they produced are omitted. (See *supra* pp. 25-26).

Still further in the same Paragraph Six it is found that some new items manufactured by the petitioner bear the combined trade-mark "Arrow-H & H", but no mention is made of the fact that, properly speaking, this is no trademark at all, being rather a use of the petitioner's name, that unusual considerations govern its use, that there has been no change, actual or contemplated, as to the use of the two brands "Arrow" and "H & H" and that the items in question are only two out of several thousand manufactured by the petitioner. (R. 796-798; Com. Ex. 81, 82).

We think the futility of arriving at a satisfactory statement of the facts through the patchwork method of discussing each of the Findings of the Commission is apparent. Our effort, therefore, has been to draft a more complete statement from the record itself and in this way to lay a proper foundation of the real issues of the case, namely, those of law.

SPECIFICATION OF ERRORS

As stated in our brief in support of our petition for writ of certiorari, Pages 11 and 12, we respectfully submit that the Circuit Court of Appeals for the Second Circuit erred:

1. In holding that the petitioner violated section 7 of the Clayton Act notwithstanding the fact that neither it, nor the holding company which existed prior to its formation, ever caused injury to the public but, on the contrary, benefited it.

2. In holding (a prerequisite to its judgment against the petitioner) that the holding company violated section 7 of the Clayton Act in acquiring the common stocks of the Arrow and the Hart & Hegeman manufacturing companies.

3. In holding that the holding company organized the petitioner.

4. In holding that, under sections 7 and 11 of the Clayton Act, the Commission has jurisdiction over the petitioner, a corporation which never acquired, held, owned or controlled a single share of the capital stocks of either the Arrow or the Hart & Hegeman manufacturing companies.

5. In holding that the Commission has the power, under section 11 of the Clayton Act, to order the petitioner to divest itself of physical properties which it acquired, not through the use of capital stock, but by virtue of the physical merger which brought it into being.

6. In holding that, except as it may be incidental to an order directing stock divestment, section 11 of the Clayton Act confers power on the Commission to

direct a corporation to divest itself absolutely of physical properties.

7. In holding that the Commission's order, which if carried into effect would cut the petitioner in two, may disregard and virtually confiscate the property rights of the greatly preponderant group of preferred stockholders who played no part in the organization or life of the holding company.

8. In affirming the order of the Commission.

SUMMARY OF ARGUMENT

1. The transactions complained of by the Commission in this case did not constitute a violation of Section 7 of the Clayton Act since, in the first place, they involved no injury to the public.

This topic covers Point 1 of our Specifications of Error.

It is our position that public interest is paramount under a Clayton Act as well as under a Sherman Act prosecution—that the rule of reason, so-called, has as logical an application to the one act as to the other.

International Shoe Co. v. *Federal Trade Commission,* 280 U. S. 291, 1930;
Appalachian Coals, Inc. et al v. *U. S.,* 288 U. S. 344, 1933.

2. Whether or not the rule of reason be held applicable to the Clayton Act, the holding company did not violate that Act in acquiring the common stocks of the two manufacturing companies; consequently there is no possible basis for prosecution of the petitioner.

This topic covers Point 2 of our Specifications of Error.

The mere acquisition by one corporation of stocks of competing corporations is not *per se* illegal; yet, upon no other theory, was the holding company in the case at bar guilty.

International Shoe Co. v. *Federal Trade Commission*, 280 U. S. 291, 1930;
Temple Anthracite Coal Co. v. *Federal Trade Commission*, 51 F. (2d) 656, (C. C. A. 3) 1931;
Federal Trade Commission v. *Thatcher Mfg. Co.*, 5 F. (2) 615, 622 (C. C. A. 3), 1925;
Aluminum Company of America v. *Federal Trade Commission*, 284 Fed. 401, 405, (C. C. A. 3), 1922;
V. Vivaudou v. *Federal Trade Commission*, 54 F. (2) 273 (C. C. A. 2), 1931;
See also:
Standard Fashion Co. v. *Magrane Houston Co.*, 258 U. S. 346, 356, 1922.

3. The Commission's Order in this proceeding is without jurisdictional warrant.

This topic covers Points 4, 5, 6 and 7 of our Specifications of Error.

The essence of the Commission's order (R. 261) is its direction to the petitioner—a corporation formed through merger, and not a holding corporation—to divest itself absolutely of physical properties. Carried into effect, the petitioner would be cut in two, with little hope of either part surviving. Not only does this order disregard the rights of the common stockholders, but it is confiscatory of the rights of the petitioner's preferred stockholders—stockholders who were not involved in the holding company and whose vote was necessary to the merger.

Notwithstanding the claims of the Commission, the petitioner never did acquire or use any capital stocks of the Arrow or the Hart & Hegeman manufacturing com-

panies in violation of Section 7 of the Clayton Act. That part of the order (R. 262) which directs a divestment of such stocks is meaningless.

It is our position that the Commission can find no warrant for its order in the Clayton Act, nor in any case decided thereunder.

Thatcher Manufacturing Co. v. *Federal Trade Commission*, 272 U. S. 554, 560, 1926;
Swift and Co. v. *Federal Trade Commission*, 272 U. S. 554, 561, 1926;
Federal Trade Commission v. *Western Meat Co.*, 272 U. S. 554, 1926.

4. As a matter of law the holding company did not organize the petitioner, which was formed through merger of four companies not including the holding company.

This covers Point 3 in our Specifications of Error.

A detailed analysis of the facts in the corporate records of the various companies demonstrates that the conclusion of the Commission, affirmed by the Court below, is not sound as a matter of law. The holding company had gone into dissolution before a single step was taken toward the merger of the two manufacturing companies and the two tax companies, and the holding company in no way directed or controlled the action of any of those merging companies in what they did to consummate the merger. This being so, the Commission has no possible jurisdiction over the petitioner.

ARGUMENT

I.

The transactions complained of by the Commission in this case did not constitute a violation of section 7 of the Clayton Act since, in the first place, they involved no injury to the public.

There is no question but that the transactions complained of by the Commission in this case not only did not injure, or tend to injure, the public in fact but, on the contrary, affirmatively benefited it. There is no dispute in the record on the subject. By virtue of the formation of the holding company, the manufacturing companies were enabled to effect great economies and to work many improvements in their manufacturing processes. These were reflected directly in lowered prices and improved quality of merchandise offered to the public. With the merger of the two manufacturing companies into the petitioner identical benefits were realized, and will continue to be realized, by the public. In addition, the merger has made possible the continued offering of both the "Arrow" and "H & H" lines in territories to which one or both of them might otherwise have been lost.

As to monopoly, it has been pointed out (*supra*, page 7) that in 1927 the combined business of the two manufacturing companies amounted to approximately twenty-four per cent of the total business of the electrical wiring device industry while in 1929 it had dropped to less than nineteen per cent thereof; also that the petitioner has some seventy active competitors, including such powerful corporations as the General Electric Company and the Bryant Electric Company (Westinghouse). The Court below finds no tendency towards monopoly, but

fails to remark upon the 1929 figures which show that the actual tendency has been *away* from monopoly.

The transactions complained of have not restrained, or tended to restrain, trade in the electrical wiring device industry. Not only did the Commission produce no witness, whether competitor, jobber or ultimate consumer, who complained against the petitioner on this score, or on the score of tendency to monopoly, but the petitioner itself called as witnesses two of its principal competitors who gave it unequivocal acquittance in the matter. (R. 691-750).

Under these circumstances, is a prosecution under section 7 of the Clayton Act proper? It is respectfully submitted that the affirmative answer of the Circuit Court below erroneously construes this Act, and is in direct conflict with principles enunciated by this Court, more especially in *International Shoe Company* v. *Federal Trade Commission,* 280 U. S. 291, 74 L. ed., 431, and note, 1930, and in *Appalachian Coals, Inc., et al* v. *United States,* 288 U. S. 344, 1933.

In the first case named, the International Shoe Company acquired all of the capital stock of the McElwain Company. This acquisition was attacked by the Commission under section 7 of the Clayton Act. It appeared that in respect of 95% of the business of the two companies there was no competition; also that, at the time of the acquisition complained of, the McElwain Company was in failing circumstances and that its actual failure would have resulted in loss to its stockholders and injury to the communities where its plants were operated. Although section 7 of the Act involved makes no reference to such contingencies or to the public interest generally, this Court held that there had been no prejudice to the public within the meaning of the Act (280 U. S., 297-8, 302-

3) and that the Shoe Company was not guilty of violating it.

The essence of that decision, we submit, is the absence of injury to the public. This Court simply carried to the Clayton Act, as it had previously carried to the Sherman Act (15 U. S. C. A., sec. 1), the rule of reason. Neither act, it should be especially noticed, makes any mention of the public interest. Logically, there can be no reason for holding that the actual absence or presence of injury to the public shall be of paramount importance with respect to one act but not with respect to the other.

Among other things, this Court says in its opinion, at pages 297-8:

> "Section 7 of the Clayton Act, as its terms and the nature of the remedy prescribed plainly suggest, was intended for the protection of the public against the evils which were supposed to flow from the undue lessening of competition. In *Standard Oil Co.* v. *Federal Trade Commission,* 282 Fed. 81, 87, the Court of Appeals for the Third Circuit applied the test to the Clayton Act which had theretofore been held applicable to the Sherman Act, namely, that *the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or unduly obstructing the due course of trade.* In *Federal Trade Commission* v. *Sinclair Co.,* 261 U. S. 463, 476, referring to the Clayton Act and the Federal Trade Commission Act, this Court said:
>
> 'The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain.'
>
> "Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals

only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 357; *that is to say, to such a degree as will injuriously affect the public.* Obviously, such acquisition will not produce the forbidden result if there be no pre-existing substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which, *to begin with,* is itself without real substance." (Italics ours).

The Court below, in the present case, adopting the argument of the Commission, has interpreted the *Shoe* case to mean that the public *ipso facto* is injured where, as in the case at bar, the products of the two corporations involved were in substantial competition with one another, i.e., 59% of the products of the Hart & Hegeman company were in competition with the products of the Arrow company (65 Fed. (2d), 340). We believe this interpretation to be untenable. In the *Shoe* case it was held that there was no infraction of the Clayton Act because there had been no injury to the public; that the public had not been injured because it had no concern in a lessening of competition which, *"to begin with,"* was insubstantial, *also* because the company whose stock was acquired was in failing circumstances. Each of these reasons was held to be adequate in itself (opinion, p. 303). There was no need to push the inquiry further. The Court below entirely overlooks the fact that, in resolving the question of the presence or absence of injury to the public, this Court did not confine itself to an examination of the competitive situation which had existed between the two companies. The test announced in the *Shoe* case obviously is: has the public been injuriously affected by the stock acquisition complained of? It is the test, not the factual situations of a particular case, which is important.

The position taken by the Commission, and affirmed by the Court below, is reminiscent of that taken by the Government in prosecutions brought by it under the Sherman Act (15 U. S. C. A., sec. 1) before the promulgation of the rule of reason in *Standard Oil Company* v. *United States,* 221, U. S. 1, 49, et seq., 1911. Section 1 of that Act, it will be recalled, provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . ."

In the *Standard Oil* case counsel for the Government argued that this rigid language (more rigid indeed than that of section 7 of the Clayton Act) embraced *every* contract, combination, etc., in restraint of trade, and hence that its text left no room for the exercise of judgment but simply imposed the plain duty of applying its prohibitions to every case within its literal language. (221 U. S. 63). The Court, however, read into the act the now familiar rule of reason, the doctrine that only such restraints as were harmful to the public should be condemned. While the Court thus departs from the literal wording of the Act, its construction is an eminently reasonable one, recognizing as it does that a standard of interpretation was contemplated and required, and that the administration of an act framed in the public interests should not be blind to actualities but should seek only to guard and promote those interests in fact.

The Federal Trade Commission, though now faced with the *Shoe* case (which it seeks to bend in its own direction), nevertheless continues to argue for a blind, harsh and inflexible construction of section 7 of the Clayton Act, and the Court below has found this argument valid. The argument runs substantially thus: section 7,

which was passed in the public interest, condemns every corporate stock acquisition the effect of which may be to substantially lessen the competition existing between two or more corporations; therefore, by legislative fiat, any such acquisition is *per se* injurious to the public and illegal and the Courts are without power to inquire into the actual facts. There is a perfect parallel between this argument and that formerly taken by the Government in prosecutions based on the Sherman Act. The argument can have no more validity in the one case than in the other. Consequently, we submit that the decision of the Court below conflicts and is inconsistent not only with the *Shoe* case but also with that standard of legality, i.e., the standard of reasonableness, heretofore held applicable, in numerous decisions of this Court, to the Sherman Act.

In *Appalachian Coals Inc., et al.* v. *United States,* 288 U. S. 344, mentioned *supra,* a case arising under the Sherman Act, an agreement, or combination, between 137 coal producers, under which competition between them would be blotted out, was held legal since no injury to the public appeared. Question was raised as to whether, in attaining their objectives, these companies should not have integrated their properties under one ownership to be within the law. This Court (page 377) held that substance, not form, was the important thing. In the case at bar, the Circuit Court of Appeals below regards form, not substance. Ignoring the realities, it finds injury to the public only in the machinery of affiliation employed. However, whether a case arises under the Sherman Act or under the Clayton Act, we find the same public, with the same interests, in the background. The position that an affiliation or consolidation injures or does not injure the public according to whether it

proceeds by way of a holding company or by way of merger is untenable. It is a matter of common knowledge that a merger is the more sweeping procedure and hence the more likely to affect the public interests in fact. Yet in this case, it has never been disputed that these two manufacturing companies could have legally merged in the first instance. And the sole ground for these proceedings against the petitioner alone, which is the merged company, is that a holding company was first formed and dissolved after complaint made, the merger following. That proves conclusively, if true, that the case turns upon a matter of form and not of substance.

In the *Appalachian* case, *supra,* this Court, among other things, said:

> "Realties must dominate the judgment. The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. 'The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains' ". (288 U. S. 360).
>
> "The court below found that, as between defendants themselves, competition would be eliminated. . . . The more serious question relates to the effect of the plan upon competition between defendants and other producers." (288 U. S. 367).
>
> "Consumers testified that defendants' plan will be a benefit to the coal industry and will not restrain competition. . . . There was similar testimony by wholesale and retail dealers in coal. . . . Competing producers testified that the operation of the selling agency, as proposed by defendants, would not restrain competition and would not hurt their business." (288 U. S. 370).

"With respect to defendant's purposes, we find no warrant for determining that they were other than those they declared. Good intentions will not save a plan otherwise objectionable, but knowledge of actual intent is an aid in the interpretation of facts and prediction of consequences. (288 U. S. 372).

"In the instant case there is, as we have seen, no intent or power to fix prices, abundant competitive opportunities will exist in all markets where defendants' coal is sold, and nothing has been shown to warrant the conclusion that defendants' plan will have an injurious effect upon competition in these markets." (288 U. S. 375).

"Defendants insist that on the evidence adduced as to their competitive position in the consuming markets, and in the absence of proof of actual operations showing an injurious effect upon competition, either through possession or abuse of power, no valid objection could have been interposed under the Sherman Act if the defendants had eliminated competition between themselves by a complete integration of their mining properties in a single ownership. *United States* v. *United States Steel Corporation*, 251 U. S. 417; *United States* v. *International Harvester Company*, 274 U. S. 693. We agree that there is no ground for holding defendants' plan illegal merely because they have not integrated their properties and have chosen to maintain their independent plants, seeking not to limit but rather to facilitate production. We know of no public policy, and none is suggested by the terms of the Sherman Act, that, in order to comply with the law, those engaged in industry should be driven to unify their properties and businesses, in order to correct abuses which may be corrected by less drastic measures." (288 U. S. 376).

We submit that these principles of law must control, whether the complaint is based on the Sherman Act or on the Clayton Act.

The Commission produced not one jobber, not one ultimate consumer, not one competitor who found the affiliation of the Arrow and Hart & Hegeman companies objectionable; the petitioner, on the other hand, deliberately produced two of its principal competitors—the General Electric Company and the Bryant Electric Company (a subsidiary of Westinghouse), each represented by a qualified officer—who found the affiliation and later merger of the two companies beyond criticism. (R. 691-750).

What is in the public interest or what is opposed to it is to be arrived at realistically, not through scholastic reasoning addressed to the bare words of the law in the manner followed by the Commission.

The transactions complained of by the Commission in this case are no more opposed to the public interests than were those complained of by the government in the *Appalachian* case. On the public interests score alone, then, the Commission's Order should be set aside.

II.

Whether or not the rule of reason be held applicable to the Clayton Act, the holding company did not violate that act in acquiring the common stocks of the two manufacturing companies; consequently there is no possible basis for prosecution of the petitioner.

If, as the Court below and the Commission have necessarily ruled, the question of actual injury to the public is immaterial in a prosecution based on section 7 of the Clayton Act (15 U.S.C.A. sec. 18), the question yet remains as to whether or not the acquisition by one corporation (not solely for purposes of investment) of all or a substantial part of the capital stocks of two or more

solvent corporations engaged in commerce, and in substantial competition with one another, is *per se* illegal under the act. Unless this question can be answered in the affirmative—and this is of necessity the answer of the Court below, as well as the Commission—, there was no guilt attaching to the holding company by virtue of its acquisition of the common stocks of the two manufacturing companies. And of course a preliminary hurdle to any judgment against the petitioner is the finding of guilt in the holding company. If its acquisition of the stocks in question was legal there can be no challenge of the supervening merger resulting in the petitioner. Merger does not lie within the scope of the Clayton Act.

As to the guilt of the holding company, we call attention to the fact that it was formed to acquire, and did acquire, the common stocks of the two manufacturing companies not for the purpose of suppressing the competition which existed between them but for the sole purpose of effecting economies and improvements in manufacture while, at the same time, preserving the competition described, and that, during the entire corporate life of this holding company, which was from early October of 1927 to early December of 1928, the sales policies and practices of the two manufacturing companies continued as always before, wholly uninfluenced by the holding company. (See *supra,* pp. 12-17).

"Competition", says the Court below, "is eliminated where two formerly competing units are brought under one dominating ownership." (65 F. (2d), p. 340).

As to this, it is well to examine carefully the act in question, the pertinent paragraph of which reads:

> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other

share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The language of this paragraph precludes the idea that the acquisition of stock alone is illegal. Congress did not say, as it surely would have done had it been so minded, that the acquisition by Company X of the capital stocks of competing companies Y and Z is *per se* unlawful; it was concerned not with the power, potential or otherwise, which might vest in Company X but rather with the question of whether that power was aimed at, and would probably bring about, a substantial lessening of competition.

In *Temple Anthracite Coal Company* v. *Federal Trade Commission,* 51 F. (2d) 656, 1931 (C.C.A. 3) the Temple Company acquired substantially *all* of the capital stocks of two coal corporations which were engaged in commerce and whose products were apparently 100% competitive. The Commission prosecuted under section 7 of the Clayton Act, finding the holding company guilty. However, the Circuit Court of Appeals found that, notwithstanding the power which might reside in the Temple Company as a result of its acquisition, the competitive situation had not been affected in fact. "The only effect which the ownership may be found to have brought about is the reduction of overhead and operating expense." (51 F. (2d) 660). The company was accordingly given a complete acquittance. *The Commission did not carry the case farther.*

It may be argued that the *Temple* case does not parallel the case at bar because, in the case at bar, the lower Court finds that the holding company organized the petitioner (which it did not do; *supra* pp. 18-24 and *infra* pp. 51-57) and that, under the petitioner, competition between the two former manufacturing companies ceased. The argument, however, is superficial. If the holding company did not violate section 7 of the Clayton Act in acquiring the common stocks of the two companies named, then it never did violate it, even taking the Court's finding mentioned just above. The chain of events entailing dissolution of the holding company and subsequent formation of the petitioner through merger was not the natural or probable outcome of the stock acquisition complained of, —it was precipitated solely because of the Commission's election to prosecute. (See *supra,* pp. 18-19).

It is the probabilities attending a stock acquisition with which the Clayton Act concerns itself. A corporation is forbidden to acquire the stock of two or more corporations in commerce the effect of which *"may be"* to substantially lessen competition, etc. As has been said, the acquisition is not *per se* condemned. The Commission itself, in its brief to the Court below, framed the issue thus: "Was the *probable* effect of the acquisition of the common stock of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company on October 10, 1927, by Arrow-Hart & Hegeman, Inc. (the holding company) (a) to substantially lessen the competition . . ." etc.?

Probable effect, naturally, must be determined as of the date of the stock acquisition complained of. Relevant inquiry in such a determination concerns itself with the objective behind the acquisition and the procedure by which this objective is to be attained. Supervening events

may also be relevant as an aid in showing what the objective really was and in throwing light generally upon the probable effects of the acquisition. In the *Temple* case, upon facts varying in no important particular from those of the case at bar, the Court found that probable trend towards lessening of competition, monopoly or restraint of trade had not been shown. Even should the Temple holding company now actually vote a physical merger of its two subsidiaries (of which it owns substantially all of the common stock), it is obvious that no prosecution under section 7 of the Clayton Act, regardless of the effect of such merger, would be maintainable,—this act deals only with the legality or illegality of the original stock acquisition; were the merger illegal, it would be because the Sherman Anti-Trust Act had been violated.

That acquisition by one corporation of the capital stock of a competing corporation, or of the capital stocks of two or more competing corporations, is not *per se* illegal under section 7 of the Clayton Act, we believe to be a well established principle of law, despite the decision of the Court below in the instant case:

International Shoe Company v. *Federal Trade Commission*, 280 U. S. 291, 1930;

Temple Anthracite Coal Co. v. *Federal Trade Commission*, *supra*, 51 F. (2d) 656, (C. C. A. 3) 1931;

Federal Trade Commission v. *Thatcher Mfg. Co.*, 5 F. (2d) 615, 622, (C. C. A. 3), 1925;

Aluminum Company of America v. *Federal Trade Commission*, 284 F. 401, 405, (C. C. A. 3), 1922;

V. Vivaudou, Inc. v. Federal Trade Commission, 54 F. (2d) 273 (C. C. A. 2), 1931.

See also:

Standard Fashion Co. v. *Magrane Houston Co.*, 258 U. S. 346, 356, 1922.

III.

The Commission's Order in this Proceeding is without Jurisdictional Warrant.

Section 7 of the Clayton Act (15 U. S. C. A., sec. 18), upon which this proceeding is based, addresses itself to the subject of stock acquisitions only. Under section 11 of the Act (15 U. S. C. A., sec. 21), the Commission is empowered to order a corporation which has acquired stock in violation of section 7 to cease and desist from such violation by divesting itself of the stock illegally held. The language of section 11 is no broader than this although in *Federal Trade Commission* v. *Western Meat Company*, 272 U. S. 554, 1926, it was held that, under the circumstances there described, the order directing the offending corporation to divest itself of the stock which it had illegally acquired, and which it still held, might include a direction to divest itself also of the physical properties which it had acquired through the exclusive use of such stock.

The order entered by the Commission against the petitioner in the present proceeding sweeps far beyond anything thus far sanctioned by this Court. Judge Swan, who dissented to the judgment of the Court below, was of the opinion that the Commission's order exceeded its jurisdiction (65 F. (2d) 340), as was Chairman Humphrey of the Commission who also dissented (R. 264-266). We believe the Commission itself would not claim that jurisdiction for its present order can be found in the language of the Act. Most inconsistently, the Commission finds itself in the position of urging a literal, harsh construction of section 7 of this Act while, at the same moment, requesting broad, implied powers under section 11 thereof. The Act, being in derogation of ordinary

rights, a proper construction of it would limit rather than enlarge its scope.

The Commission's order (R. 261) amounts to a bald direction to the petitioner to divest itself of physical properties. This direction is in no way incident to an order of stock divestment. The petitioner never acquired stocks in violation of section 7 of the Clayton Act; it never acquired and does not now hold, any share of the capital stocks of either the Arrow or the Hart & Hegeman manufacturing companies. At the time of its incorporation, i. e. December 31, 1928, it acquired the physical properties of these two companies through the fact of absolute merger, not through the use of their capital stocks. These two companies, indeed, ceased to exist coincidently with the merger. In its order, affirmed by the Court below, the Commission not only exceeds the powers conferred upon it under section 11 of the Act but overleaps, in the first instance, the fact that the petitioner never acquired stocks in violation of section 7.

The Commission, it should be understood, does not concede that the petitioner never itself acquired stocks in violation of section 7 of the Clayton law. Obviously conscious of jurisdictional obstacles, the Commission, in paragraph 2 of its order (R. 261-262), in an evident attempt to avoid the appearance of directing a divestment of physical properties alone, directs the petitioner to divest itself of all common stocks of the Hart & Hegeman company "acquired by it as a result of the merger" of the companies involved "so as to include in such divestment" the physical properties of this company, or, in the alternative, to divest itself of all common stock of the Arrow company thus acquired by it so as to include in such divestment its physical properties.

However, this order, and the finding upon which it is

based (R. 249-250), are so hollow as to be beyond the bounds of legitimate controversy. In the first place, although the common stocks of the Arrow and the Hart & Hegeman manufacturing companies were assets of the two tax companies involved in the merger (see *supra*, pp. 20-24), all four companies so involved ceased legally to exist coincidentally with this merger. Under Connecticut law at least (R. 218), and presumably under the law of any state, when two or more corporations merge, they merge into a single new corporation. All the stock of each one of the four consolidating companies was wiped out by the consummation of the merger and the stock of the merged company was issued in lieu of the stocks of the consolidating companies. (R. 208-211). Its preferred stock was issued share for share to the holders of the preferred stock of Arrow and of Hart & Hegeman. Its common stock was issued to the general public who held the stock of the two tax companies which also were included in the merger. (R. 208).

The petitioner, then, never acquired as assets, or otherwise, and it certainly never held and does not now hold, the stocks of the two manufacturing companies,—there can be no such thing as outstanding capital stock of a company which does not exist and whose assets have been absorbed by the merged company.

In the second place, the petitioner voted no stocks to acquire the physical properties of the Arrow and the Hart & Hegeman companies,—it acquired those physical properties by the fact of the merger which brought it into being.

Finally, this proceeding is not an original one against the petitioner; the original proceeding was against the former holding company, the petitioner having been brought into it by a supplemental complaint. Even

could the supplemental complaint be regarded as in the nature of an original proceeding against the petitioner. then it is only necessary to point out that it was instituted about six months after the stock acquisition complained of, there having been, in the meantime, a complete physical merger of the properties of the two manufacturing companies involved. The petitioner's position then would be unassailable under *Thatcher Manufacturing Company* v. *Federal Trade Commission;* 272 U. S. 554, 560, 1926 and *Swift and Company* v. *Federal Trade Commission,* 272 U. S. 554, 561.

The Commission's Order in this case, which if carried out would tear the petitioner in two (with the obvious probability that neither part could survive) quite ignores the property rights and interests of the preferred stockholders who played no part in the formation, life or dissolution of the holding company. These preferred stockholders, it will be remembered, represented nearly 73% of the capitalization of the old Arrow and Hart & Hegeman manufacturing companies. (See *supra,* page 9). By what authority may the Commission enter an order against the petitioner which is confiscatory of the property interests and rights of its preferred stockholders? In the *Western Meat* case, *supra,* p. 47, relied upon by the Commission, it is to be observed that the offending corporation had acquired *all* of the capital stock of its competitor, the Nevada Packing Company.

IV.

As a matter of law, the holding company did not organize the petitioner, which was formed through merger of four companies not including the holding company.

The Commission found that the holding company organized the petitioner (R. 258, 239-252). This finding is supported by the Court below and is the controlling factor in its decision. In his opinion, Judge Manton, among other things, says (R. 1065):

> "By the letter and the use of proxies, Arrow-Hart & Hegeman, Inc. dictated and controlled the formation of the petitioner and therefore the petitioner comes under the jurisdiction and is subject to the order of the respondent. *Federal Trade Commission* v. *Western Meat Co.*, 272 U. S. 554."

Up to this point in our argument, we have not taken direct issue with the conclusion that the holding company organized the petitioner; our preceding topics have been independent of that conclusion. Although the subject is treated in our Statement of Facts, *supra* pp. 18-25, we shall consider it now in greater detail. It is clear that if the holding company did not organize the petitioner all basis for any claim of jurisdiction by the Commission under the Clayton Act at once vanishes. The petitioner came into being as a result of merger. It never acquired stocks in violation of section 7 of the Clayton law. (While the Commission claims it did do so, this claim is wholly without merit, as we show *supra*, at pp. 48-50).

That the holding company did not dictate and control the formation of the petitioner can be demonstrated with mathematical accuracy from the record. The facts are

clear and undisputed. Stated chronologically they are as follows:

1. On November 10, 1928 the directors of the holding company, on the advice of counsel, recommended the dissolution of that holding company, and called a meeting of stockholders for December 10, 1928 to confirm that action. (R. 60-62).*

2. On December 1, 1928 the plan of dissolution outlined in that letter was changed, on the advice of tax counsel, so as to come within the reorganization provisions of the Income Tax Law; and a new letter went to stockholders. (R. 242-245).

In outlining that proposed plan, it was stated in that letter that a special meeting of stockholders would be held on December 6, 1928 to authorize the transfer of the common stock of Arrow and of Hart & Hegeman to two tax companies whose stock in exchange would be issued either to the holding company or directly to its stockholders. A separate proxy went out with that letter, which did not cover the dissolution meeting called for December 10, 1928, although the gentlemen named as attorneys were the same in both cases. The letter then said:

> "(b) That when such exchange of shares in conformity to the plan of reorganization, made necessary to meet the criticism of the Federal Trade Commission, as indicated in our former letter and notice,

*Exhibits A to K, both inclusive (R. 60-222), annexed to the petitioner's answer to the supplemental complaint, which are frequently cited in this chronological statement, were all introduced into evidence either by the Commission or by the petitioner under different numbers. The matters set forth in said exhibits are true and correct. (R. 958-959. A is Com. Ex. 44; B is Com. Ex. 46; C is Com. Ex. 48, 49, Petitioner's Ex. 32; D is Com. Ex. 58; E is Com. Ex. 76, 77; F is Com. Ex. 47, 56; G is Petitioner's Ex. 30; H is Petitioner's Ex. 29; I is Com. Ex. 51; J is Petitioner's Ex. 38; K is Petitioner's Ex. 37).

has been consummated, there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at a meeting called for December 10, 1928, or at an adjournment thereof, it is anticipated that that corporation will be dissolved." (R. 244).

The letter further stated that according to the plan, immediately after the dissolution of the holding company on December 10, 1928, a merger of the "four corporations then in existence" i. e. the two manufacturing companies and the two tax companies "will be submitted to the stockholders for approval. It is hoped that if adopted this merger or consolidation will be effective at the close of business on December 31, 1928." (R. 244).

As we outline the following steps, it will be noticed that the holding company never did a thing to compel the merger, never voted the stock of the two manufacturing companies or bound them in any way to agree to a merger, and never had the power to do so, (as it did not control the preferred stocks of the two manufacturing companies, and, without the vote of the preferred stockholders, no merger could be effected), and that the petitioner never acquired the capital stocks of the two manufacturing companies. The only agreement or contract the holding company made was with the two tax companies by which they agreed to issue their stock to the stockholders of the holding company in exchange for the transfer of all its assets.

The plan itself was not a contract or agreement. By approving it, no obligation was assumed and no rights acquired.

3. On December 6, 1928 the stockholders of the holding company met, approved and adopted, but had no power to carry through, the plan. They could and did authorize the first step, namely the transfer of all the com-

mon stock of Arrow to one tax company in exchange for the issue by that tax company of all its capital stock direct to the stockholders of the holding company, and similarly, the transfer of all the common stock of Hart & Hegeman to the other tax company in exchange for the issue of all its stock of the stockholders of the holding company.

A full record of that meeting appears in the Record. (R. 68-75).

4. On December 6, 1928 the directors of the Arrow tax company voted that as the holding company had transferred to it all the common stock of Arrow in exchange for all its stock and had authorized and directed this company to issue its stock to the stockholders of the holding company in accordance with an attested list of stockholders furnished, the officers were directed to issue all the tax company stock to the stockholders of the holding company—and later in the minutes of that same meeting is the report showing that the stock had been so issued to the stockholders of the holding company. (R. 144-148, a part of the full corporate record of that company, all of which is at pages 116-157).

5. On December 6, 1928, the same proceedings were had by the Hart & Hegeman tax company as to the stock of Hart & Hegeman. The full corporate record of that company appears at pages 158-199 of the Record and the meeting of December 6, 1928 will be found at pages 186-190 thereof.

6. On December 10, 1928 the stockholders of the holding company met and confirmed the directors' vote to dissolve. (R. 76-80).

7. On December 10, 1928 a certificate was filed with the Secretary of State certifying to such action as to dissolution. Commission's Exhibit 57 (R. 329-330 folios 987-8).

8. On December 11, 1928 the directors of Arrow (R. 84-86), the directors of Hart & Hegeman (R. 102-104) and the directors of each of the two tax companies (R. 151-152; 192-194) met and considered the proposed agreement for consolidation of the four companies. In each case it was approved and signed by the individual directors and a meeting of stockholders was called for December 31, 1928 to act thereon.

9. On December 31, 1928 the stockholders of the four companies (i.e. the two manufacturing companies and the two tax companies) by a two-thirds vote of all the outstanding stock of each class voted to approve the merger.

At the stockholders' meeting of Arrow 16,026 out of 18,950 shares of preferred stock, voting separately from the common stock, approved the merger and no shares voted against it. (R. 92-100).

At the stockholders' meeting of Hart & Hegeman 11,522 out of 13,333 shares of preferred stock, voting separately from the common stock, approved the merger and no shares voted against it. (R. 109-115).

10. On December 31, 1928 the Agreement of Consolidation was finally certified and filed and approved by the Secretary of State. (R. 200-217).

This record conclusively establishes that while the plan was promulgated and recommended by the old holding company before it dissolved, it did not dictate or control

the formation of the petitioner. It did not utilize its voting power on the common stocks of the manufacturing companies. It did not and could not vote on the preferred stocks of those companies.

The distribution of the stock of the two tax companies to the stockholders of the old holding company was unconditional and without any strings.

The proxies given by stockholders were revocable at any time during the procedure and no agreement between individuals to vote for the plan was ever made.

Voting as proxies for stockholders at a meeting of the holding company did not obligate the individuals for whom they voted to vote the same way at stockholders' meetings of other corporations.

The Commission has never claimed there was any such agreement or obligation unless it were made by the adoption of the Plan on December 6 by the holding company. But that plan as outlined in the letter of December 1, (R. 63-66) expressly states that the meeting of the stockholders of the holding company will be held *"to authorize this first step in the plan"* to exchange stock with the tax companies (R. 64) and then the company will be dissolved. The same plan then states that after the dissolution, a merger will be submitted to the stockholders of the two manufacturing companies and of the two tax companies *for approval* and *if adopted* it is hoped it will be effective on December 31, and the letter closes with an appeal for support of the plan.

That procedure as outlined in that letter and carried out in the votes does not sustain the conclusion of the Circuit Court of Appeals that "by the letter and the use of the proxies Arrow-Hart & Hegeman, Inc. dictated and controlled the formation of the petitioner, and there-

fore the petitioner comes under the jurisdiction and is subject to the order of the respondent."

We respectfully submit that the Court below erred in reaching such a conclusion of law.

Respectfully submitted,

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January 13, 1934.

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 363

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY, petitioner

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 1043–1051) is reported in 65 F. (2d) 336. A *per curiam* opinion (R. 1039–1042) with respect to petitioner's motion to amplify the record and to respondent's motion to strike certain portions of the petition is reported in 63 F. (2d) 108.

JURISDICTION

The judgment sought to be reviewed was entered June 6, 1933. (R. 1052.) The petition for certiorari was filed August 19, 1933. Petitioner invokes the jurisdiction of this Court under Section 11 of the Clayton Act (38 Stat. 730, 735) and under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

(1) Whether the acquisition by a holding company of all of the voting stocks of two manufacturing corporations, where 59% of the products of one of those corporations were sold in active and direct competition with all of the products of the other, and where the combined annual sales of the two corporations constituted about 24% of the total sales of the entire industry, may properly be found by the Federal Trade Commission to constitute a violation of Section 7 of the Clayton Act.

(2) Whether the jurisdiction of the Federal Trade Commission to require a restoration of the competition previously existing between two corporations whose stocks were illegally acquired by a holding company, may be defeated after the filing of a complaint by the Commission under Section 7 of the Clayton Act, by a merger of the competing corporations, accomplished with the aid of the unlawfully acquired stocks.

STATUTE INVOLVED

Sections 7 and 11 of the Clayton Act (Act of October 15, 1914, c. 323, 38 Stat. 730, 731–733, 734–735) are set forth in part in the Appendix, *infra*, pp. 19–22.

STATEMENT

On March 3, 1928, the Federal Trade Commission issued a complaint (R. 3–9) against Arrow-Hart & Hegeman, Incorporated (hereinafter referred to as the respondent) charging that it had violated and was violating Section 7 of the Act of October 15, 1914, known as the Clayton Act. The complaint alleged that the respondent was a Connecticut corporation, organized on October 4, 1927, for the purpose of acquiring the share capitals of The Hart & Hegeman Manufacturing Company and The Arrow Electric Company, Connecticut corporations, and that, on October 10, 1927, it had acquired all of the shares of common stock of said corporations. (R. 3.) It alleged further that The Hart & Hegeman Manufacturing Company owned and operated a plant, located at Hartford, Connecticut, which manufactured electrical wiring devices of various kinds. Its total sales for the year 1926 were $4,089,621, of which $3,505,988 were made in interstate commerce in competition with The Arrow Electric Company and other corporations similarly engaged. (R. 4.) The complaint alleged further that The Arrow Electric Company owned and operated a plant at Hartford, where

it also manufactured electrical wiring devices. (R. 5.) Its total sales for 1926 were $4,125,181, of which $3,869,715 were made in interstate commerce in competition with The Hart & Hegeman Manufacturing Company and others. (R. 5.) The complaint charged finally that the effect of the acquisition by the respondent of the common stocks of these two manufacturing concerns might be and was substantially to lessen competition in electric wiring devices between The Hart & Hegeman Manufacturing Company and The Arrow Electric Company and to restrain commerce in electrical wiring devices in the sections or communities in which such corporations were severally engaged, and tended to create a monopoly in electrical wiring devices of various types and classes. (R. 6–7.) Notice was given that a hearing would be held on May 3, 1928, with respect to the charges set forth in the complaint. (R. 7–9.) The time allowed respondent to answer the complaint was extended from time to time, the answer being filed on September 7, 1928. (R. 12–17.)

On November 10, 1928, Edward R. Grier, the president of respondent (and also vice-president of the Arrow Electric Company), addressed a letter to its stockholders stating that dissolution of the holding company and a distribution of its assets had been recommended by counsel to meet the recent criticism of the Federal Trade Commission, and stating further that the directors had voted to rec-

commend such dissolution. (Exh. A, R. 61.) He stated that the entire assets of the corporation were the shares of common stock of the two manufacturing companies, and that it was expected that distribution of these shares would be made in kind, so that each stockholder would receive shares of the common stock of either one or both of the manufacturing companies. (R. 61.) There was enclosed with the letter a notice of a special meeting of stockholders to be held December 10, 1928 (R. 60) and a proxy authorizing the dissolution and distribution of assets. (R. 61.) He stated that he believed that upon distribution of the company's assets the directors of the two manufacturing companies would propose to their respective stockholders an agreement of consolidation of the two companies. (R. 62.)

On December 1, 1928, a supplemental letter was addressed to the respondent's stockholders indicating fully the various steps which would be taken to consummate a plan of reorganization. (Exh. B, R. 63–66.) The steps proposed were as follows: (1) The respondent, Arrow-Hart & Hegeman, Incorporated, would transfer the shares of common stock of The Arrow Electric Company which it held to a new Arrow company in exchange for all of the capital stock of the latter, such new shares to be issued either to respondent or directly to its stockholders in proportion to their present holdings of respondent's stock; (2) a similar transfer of the

shares of The Hart & Hegeman Manufacturing Company held by respondent would be made to a new Hart & Hegeman company in exchange for all of the latter's capital stock (these two transactions to be authorized at a special meeting of stockholders to be held December 6, 1928, a notice of which was enclosed); (3) when the exchange of shares in conformity with the plan of reorganization, "made necessary to meet the criticism of the Federal Trade Commission", was consummated, respondent would be dissolved at the meeting already scheduled for Decemer 10, 1928; and (4), immediately thereafter the four corporations then in existence, viz, the two manufacturing companies and the new Arrow and Hart & Hegeman companies, would be merged or consolidated. (R. 63–64.) These separate steps, the president's letter stated, were a part of one plan of reorganization, which, in the opinion of counsel, was desirable to meet the criticism of the Federal Trade Commission and to bring the reorganization within the provisions of the Revenue Act of 1928, so as to involve no tax to any stockholder. (R. 65.) It was essential, the letter stated, to have the cooperation of the stockholders in effecting these steps, and proxies were enclosed authorizing the holders to vote in favor of the plan, to receive the stockholders' shares in the new companies, and to surrender such shares for shares of stock of the merged or consolidated corporation. (R. 65.)

At the special meeting of stockholders of respondent, held December 6, 1928, the reorganization plan was adopted (Exh. C, R. 68–75); respondent then transferred its Arrow and Hart & Hegeman stocks, respectively, to the new corporations, known as The Arrow Manufacturing Company and The H & H Electric Company (R. 77); and, on December 10, 1928, a preliminary certificate of dissolution of respondent was authorized to be filed. (R. 79.) (The final certificate was filed April 11, 1929. (R. 81.)) Thereafter, on December 31, 1928, an agreement of consolidation or merger (Exh. I, R. 200–212) between The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, The Arrow Manufacturing Company and The H & H Electric Company was ratified by the stockholders of each. (R. 92–96, 109–113, 152–157, 194–199.) The petitioner, The Arrow-Hart & Hegeman Electric Company, was formed as a result of this merger. (R. 200.)

On June 29, 1929, the Federal Trade Commission filed its supplemental complaint making the petitioner a joint respondent in the proceeding, relating anew the allegations set forth in its original complaint, and setting forth the steps resulting in the formation of the petitioner. (R. 24–41.) The supplemental complaint charged that the stocks of the competing manufacturing companies which were unlawfully acquired were used to effect the merger and to vest the capital stocks and physical

properties of the manufacturing concerns in the petitioner (R. 33); that the transfer by respondent of the capital stocks of the manufacturing companies to the new Arrow and H & H companies was not preceded by the restoration of the independent and competitive status of the two manufacturing companies, but was accomplished by virtue of authorization given by respondent's stockholders, who were not acting independently as stockholders of either company but in effect as stockholders of both (R. 34–35); and that such divestment by the holding company of the stocks, by transfer to the two new companies, did not constitute a compliance with Section 7 of the Clayton Act. (R. 36–37.) It alleged finally that the steps in the reorganization were taken and consummated at the instance of and through the leadership of the respondent holding company (R. 37), and charged that the intent and purpose of the respondent, its officers and stockholders was to oust the Commission of jurisdiction in violation of Section 7 of the Clayton Act. (R. 38.) A supplemental answer was filed October 14, 1929, and a hearing held before an examiner of the Commission, beginning on May 25, 1931.

On July 6, 1932, the Commission issued its findings of fact and order. (R. 230–260, 261–263.) The Commission found that:

The Hart & Hegeman Manufacturing Company, of Hartford, Connecticut, organized in 1891, had been engaged in the manufacture and sale of electrical wiring devices, including particularly electric snap switches and wall plates. In 1914, it began selling as exclusive agent the line of electrical devices consisting of sockets, receptacles, and attachment plugs manufactured by the H. T. Paiste Company, of Philadelphia, all of whose outstanding stock it subsequently acquired. (R. 232.) At the time of the acquisition of its common stock by the respondent, it was engaged in the sale and distribution throughout the United States of a full line of electrical wiring devices to electrical jobbers and other customers. (R. 233.) The Arrow Electric Company, also of Hartford, manufactured a general line of electrical wiring devices, including sockets, receptacles, attachment plugs, switches, etc. (R. 235.) It also sold its products throughout the country. (R. 235.) The two companies were in direct and substantial competition in the manufacture, sale, and distribution in interstate commerce of a full line of electrical wiring devices, usually described in the trade as "shelf goods", or wiring devices ordinarily stocked and distributed by electric supply distributors or jobbers. (R. 236.) Both companies maintained branches, sales offices, or commission men in Boston, New York City, Baltimore, Chicago, and San Francisco. (R. 237.)

Their respective sales through such branches for 1926, were as follows (R. 238):

Cities	Arrow Electric Co.	Hart & Hegeman Mfg. Co.
Boston	$483,933	$315,914
New York	1,107,680	1,010,373
Baltimore	240,517	144,163
Chicago	1,524,220	1,368,941
San Francisco	462,989	169,254

The approximate domestic sales for The Arrow Electric Company in 1926 were $3,825,000, and for The Hart & Hegeman Manufacturing Company, $3,145,000. (R. 238.) Their sales for the years 1927 and 1928 were (R. 255–256): Arrow, $3,849,000, $3,537,000; Hart & Hegeman, $4,537,000, $4,478,000. At the time their respective common stocks were aequired by the respondent, at least 59% of the volume of Hart & Hegeman sales, consisting of "shelf goods", was sold in direct and active competition with the entire output of The Arrow Electric Company. (R. 238.) Approximately 25% to 30% of the customers of each company were joint customers. (R. 239.) The total volume of sales of both companies in 1927 was in excess of 25% of the total volume of sales of all manufacturers of electrical wiring devices in that year. (R. 256.) The Commission found that the petitioner was the largest producer of electrical wiring devices in the United States. (R. 256.)

The Commission also found that, on October 10, 1927, the holding company acquired the 20,000

shares of Hart & Hegeman common stock by exchanging therefor 80,000 shares of its capital stock (R. 234), and that it acquired the 30,000 shares of Arrow common stock in exchange for 120,000 of its shares. (R. 236.)[1] The common stocks of the two companies had exclusive voting rights, except in case of default. (R. 234, 235.) The Commission found that shortly after the formation of the holding company, The Arrow Electric Company purchased from Hart & Hegeman the machinery, equipment, and inventory of the subsidiary, H. K. Paiste Company, and took over the business of manufacturing porcelain parts for The Hart & Hegeman Company. (R. 252, 348.) The two operating companies also manufactured certain other articles for each other. (R. 252.) The plant of the

[1] The common stock of The Arrow Electric Company, as well as that of The Hart & Hegeman Manufacturing Company, was closely held. Exhibit 10 has appended a list of the common stockholders of both companies as of August 6, 1927. Of the 30,000 shares of Arrow common stock, Edward R. Grier, vice president, held 5,044 shares; Edward Bosworth Grier, assistant secretary, 5,044 shares; Charles G. Perkins, president, 6,304 shares; and Benjamin C. Perkins, a director, 6,304 shares. Stock control of The Hart & Hegeman Company was in the hands of the Morris family. (R. 271.) All of the above-named individuals and Samuel P. Williams, president of Hart & Hegeman, were parties to and instrumental in causing each of the various corporate steps, hereinabove described, to be taken. They also held the controlling stock interest in the respondent holding company, organized in October 1927 (Exh. 38.), which is also substantially the case with respect to the petitioner, created as a result of the merger.

Electrical Porcelain Manufacturing Company, another Hart & Hegeman subsidiary, was also closed and its machinery and equipment transferred to a subsidiary of The Arrow Company. (R. 252.)

The Commission found further that the respondent had caused the formation of the new Arrow Manufacturing Company and The H & H Electric Company, to which its assets (the capital stocks) were transferred. (R. 242.) It found also that, on December 31, 1928, the holders of the common stock of the petitioner, the merged corporation, were identical with the stockholders of the holding company, on November 30, 1928; and that the directors of the petitioner, on January 1, 1929, were the same persons who were directors of the respondent before the merger. (R. 250.) Messrs. Grier and Williams, the president and vice president of the respondent, occupied the same positions in the merged corporation. (R. 250.)

The Commission concluded that the divestment by the respondent of the common stock of the two manufacturing companies was not a compliance with the Clayton Act; that the steps in the reorganization plan were not taken to restore the competition which previously existed between the two manufacturing companies, but constituted an artifice and subterfuge designed to evade Sections 7 and 11 of the Clayton Act, and to perpetuate the elimination of competition which had existed between the two manufacturing companies prior to October 10, 1927. Whereupon, it issued its order

requiring the petitioner to divest itself of the stock and assets of one or the other of the two formerly competing companies. (R. 261–263)

Petitioner sought in the court below to have the Commission's order set aside and, from a decree sustaining the order, seeks this review.

ARGUMENT

I

It is submitted that certain findings of fact of the Federal Trade Commission which are not controverted, clearly support its conclusion that the acquisition of the voting stocks of the two competing manufacturing corporations constituted a violation of Section 7 of the Clayton Act. It found that in the years 1927 and 1928, the period of the holding company, the total sales of The Arrow Electric Company were $3,849,000 and $3,537,000, and for The Hart & Hegeman Company, $4,537,000 and $4,478,000. (R. 255, 256.) In 1927, their combined sales constituted approximately 25% of the total volume of sales of electrical wiring devices of all descriptions by all manufacturers. (R. 256.) At the time when their stocks were acquired, 59% of the volume of Hart & Hegeman sales was sold in direct and active competition with the entire output of The Arrow Company. (R. 238.) Such products were of similar quality and price and sold to the same class of trade. (R. 238.) Sales divisions were maintained in the same cities and from 25%

to 30% of their customers were common to both. (R. 237, 239.) These facts show not only that there was substantial competition between the two corporations, but also that each of the corporations controlled a substantial portion of the total business. The Commission found the petitioner to be the largest producer of electrical wiring devices in the United States. (R. 256.)

Petitioner's contention that the acquisition of stock did not violate Section 7 of the Act is not supported, as it asserts, by the decision of this Court in *International Shoe Company* v. *Federal Trade Commission*, 280 U.S. 291. In that case, the two companies involved were found to be in competition in respect of not more than 5% of their respective sales. Moreover, the company whose stock was acquired was faced with financial ruin, so that it was doubtful whether the effect of the acquisition would be to eliminate competition in the future. It was upon the basis of these facts that the Court held Section 7 to be inapplicable. Petitioner refers to the statement of the Court that the Act applies only to such acquisitions as probably will result in the lessening of competition to a substantial degree, that is, to such a degree as will injuriously affect the public (p. 299), and relies upon the absence of proof of direct injury to the public resulting from this acquisition. We submit that there is nothing in the *Shoe case* which lends support to the view that proof of injury to the public in the form of

increased prices, or monopoly, is prerequisite to the application of the Act. The Court, in the statement relied on, pointed out that obviously there could be no injury to the public in "the lessening of competition, which, to begin with, is itself without real substance." (P. 298.) Where, as here, the competition is of real substance, there would seem to be no question as to the existence of public interest.

Petitioner contends apparently that competition was not lessened by the acquisition of stock, because, it is asserted (Br., p. 20), the holding company did not exercise control over the sales policies of the manufacturing companies. While this is not conceded (*supra*, pp. 11–12), it is hardly necessary to point out that, in any case, the power to exercise control existed, and undoubtedly would have been exercised, as occasion required, had the holding company continued. And such rivalry as there may have been between salesmen engaged in a common cause and subject to the same control cannot, in any sense of the word, be regarded as competition. (See *Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686, 688 (C.C.A. 7th).)

We think it clear, moreover, that there is no conflict between the decision below and that in *Temple Anthracite Coal Company* v. *Federal Trade Commission*, 51 F. (2d) 656 (C.C.A. 3d), for there the combined production of the two companies involved was found to be inconsequential.

II

Petitioner contends that even if the stock acquisition was illegal, the jurisdiction of the Commission was defeated by the steps taken subsequent to the filing of the complaint. (*Supra*, pp. 4–7.) This contention is equivalent to the assertion that stocks illegally acquired may be used to perpetuate the forbidden lessening of competition, thus rendering Section 7 of the Clayton Act adentate. We submit that Congress has evidenced a contrary intention, as this Court indicated in *Federal Trade Commission* v. *Western Meat Company*, 272 U.S. 554.

In that case, the Commission's order required the respondent so to divest itself of the stock of a competing packing company as to include in such divestment the plant and physical properties of the company. The Court sustained the order, stating that the divestment of stock should be actual and complete, and could not be effected by using the control resulting from the ownership of the stock to secure title to the assets of the company whose stock was acquired. (P. 560.) In the present case, the illegally acquired stocks were employed to effectuate the merger. (*Supra*, p. 7.)

The other two cases considered with the *Western Meat* case (*Thatcher Manufacturing Company* v. *Federal Trade Commission; Swift & Company* v. *Federal Trade Commission;* 272 U.S. 554, 560, 561) do not support petitioner's view that the Commis-

sion was ousted of jurisdiction after the filing of the original complaint, but, rather, the contrary view. In the *Thatcher case,* the petitioner acquired the stocks of three competing corporations, and caused a transfer to it of their assets, the corporations being dissolved. The Commission then filed its complaint under Section 7. The Court held the subsequently entered order of the Commission, which required divestiture of the assets, to be beyond the Commission's authority, on the ground that the assets were obtained prior to any action by the Commission. The Court said (p. 561):

> The Act has no application to ownership of a competitor's property and business *obtained prior to any action by the Commission,* even though this was brought about through stock unlawfully held. (Italics ours.)

In the *Swift case,* likewise, a similar order of the Commission was set aside on the ground that the assets had been acquired prior to the filing of a complaint by the Commission. (P. 563.) In *Federal Trade Commission* v. *Eastman Kodak Company,* 274 U.S. 619, 625, the same distinction was made with respect to an order entered under Section 5 of the Federal Trade Commission Act.

It seems reasonable to conclude from these decisions that where, after the institution of a proceeding by the Commission under Section 7, stocks illegally acquired are employed to obtain assets, the Commission has the power to make its proceeding

effective by ordering not only a divestiture of the stock but also of the assets. It follows that in this case, where, after the Commission filed its complaint, the illegally acquired stocks were used for effectuating a merger of the assets of the competing corporations, the Commission had authority to direct a retransfer of the assets. Unless this be true, the anomalous situation would result that the effect of a proceeding by the Commission under Section 7 of the Clayton Act would be to induce a merger of the assets of the competing corporations, rather than to restore competition.

CONCLUSION

It is respectfully submitted that the decision below was correct, and that there is no conflict of decisions. The petition should be denied.

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APPENDIX

The pertinent provisions of Sections 7 and 11 of the Clayton Act, c. 323, 38 Stat. 730, 731–732, 734–735 (U.S.C., Title 15, Secs. 18, 21), are as follows:

SEC. 7.

* * * * *

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

* * * * *

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason

to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. * * *

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of ap-

peals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. * * * The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have

the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 363

THE ARROW-HART & HEGEMAN ELECTRIC COMPANY, petitioner

v.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 1059–1067) is reported in 65 F. (2d) 336. A *per curiam* opinion (R. 1055–1058) with respect to petitioner's motion to amplify the record and to respondent's motion to strike certain portions of the petition for review is reported in 63 F. (2d) 108.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 6, 1933. (R. 1068.) Peti-

tion for certiorari was filed August 19, 1933, and was granted December 11, 1933. (R. 1069.)

Jurisdiction of this Court rests on Section 11 of the Clayton Act, c. 323, 38 Stat. 730, 735 (U.S.C., Title 15, Sec. 21) and on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The questions presented are:

(1) Whether there is sufficient evidence to support the Federal Trade Commission's finding that the effect of the acquisition by Arrow-Hart & Hegeman, Inc., in October, 1927, of the voting stock of two manufacturing corporations, The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, may be to substantially lessen competition between the two manufacturing corporations.

(2) Whether the Federal Trade Commission, in order to hold such stock acquisition a violation of Section 7 of the Clayton Act, was required to find any injury to the public other than the probable substantial lessening of competition between the two manufacturing corporations.

(3) Whether the Federal Trade Commission had power under the Clayton Act to order petitioner to divest itself of the assets of one or the other of the manufacturing corporations, where, after the issuance by the Commission of a complaint under Section 7 against Arrow-Hart & Hegeman, Inc.,

that company by means of its unlawful control over the voting stocks of the manufacturing corporations, caused petitioner to be created by the consolidation of these two corporations.

STATUTE INVOLVED

The pertinent provisions of Sections 7 and 11 of the Clayton Act are set forth in Appendix A, *infra*, pp. 53–56.

STATEMENT

On March 3, 1928, the Federal Trade Commission issued a complaint against Arrow-Hart & Hegeman, Inc. (hereafter referred to as the original respondent), charging that it had violated Section 7 of the Clayton Act by acquiring on or about October 10, 1927, all of the common voting stock of two competing manufacturing companies, The Hart & Hegeman Manufacturing Company and The Arrow Electric Company. (R. 3–9.) An answer was filed on September 7, 1928. (R. 12.) Thereafter, on December 6, 1928, the original respondent transferred the common voting stock of one of said manufacturing companies to a newly created holding company, and the common voting stock of the other manufacturing company to a second newly created holding company; steps were taken to dissolve the original respondent; and on December 31, 1928, the petitioner, The Arrow-Hart & Hegeman Electric Company was formed by the consolidation of the two manufacturing companies and the two newly formed holding com-

panies. On June 29, 1929, the Commission issued a supplemental complaint joining the petitioner as respondent. (R. 24–41.) The supplemental complaint was answered by petitioner on October 14, 1929. (R. 42.)

The Commission, after protracted hearings before an examiner, found, on July 6, 1932 (R. 230), one Commissioner dissenting (R. 264–266), that the original respondent's acquisition of the common stock of the two manufacturing companies constituted a violation of Section 7 of the Clayton Act in that the effect thereof has been, is, and may be to substantially lessen competition between the two manufacturing companies in the sale and distribution of electrical wiring devices in interstate commerce, to restrain interstate commerce in electrical wiring devices in various sections or communities and to tend to create a monopoly in the electrical wiring devices industry (R. 258); that the transfer by the original respondent of the said common stock to the newly created holding companies was not such a divestment as to constitute a compliance with the Clayton Act (R. 258); that the course of action of the original respondent in organizing petitioner was not taken to restore the competition which had previously existed between the two manufacturing companies, but was in part for the purpose of avoiding a claim for income tax by the United States, and in part an artifice and subterfuge designed to evade the provisions of Sections

7 and 11 of the Clayton Act, and to perpetuate the elimination of all competition which had existed between the two manufacturing companies prior to October 10, 1927 (R. 258–259). It concluded that the acquisition by the original respondent of the common stock of the two manufacturing companies "and the continued ownership and/or control, and the voting of said stocks by the said original respondent, which culminated in the organization of" petitioner and the acquisition by petitioner, through merger, of the common stocks and of the assets of the two manufacturing companies, constituted a violation of Section 7 of the Clayton Act. (R. 260.) It ordered petitioner to divest itself of the stock and assets of one or the other of the two manufacturing companies. (R. 261–263.)

A petition to review the Commission's order was filed in the Circuit Court of Appeals, and that court affirmed the Commission's order, one Judge dissenting upon the ground that the order exceeded the Commission's jurisdiction. (R. 1059–1067.)

In October, 1927, The Hart & Hegeman Manufacturing Company of Hartford, Connecticut, organized in 1891, was engaged in the manufacture, sale and distribution throughout the United States of a full line of electrical wiring devices, generally known as "shelf goods," to jobbers and other dealers. (R. 310–311, 350, 393–411, 462–472; Com. Ex. 30, Resp. Ex. 36.) Its domestic sales in 1926 were $3,145,068, and in 1927 were $3,147,178. (R. 476.) Its total volume of sales, both export and

domestic, were, in 1926 $4,153,000, and in 1927 $4,537,000. (R. 927.)

In October, 1927, The Arrow Electric Company, of Hartford, Connecticut, in operation since 1905, also manufactured, sold and distributed "shelf goods" throughout the United States to electrical jobbers and other dealers. (R. 415–417, 503–531; Com. Ex. 30, Resp. Ex. 36.) Its total volume of sales in the United States in 1926 was $3,825,712, and in 1927 $3,300,416. (R. 530.) Its total volume of sales, both export and domestic, in 1926 was $4,012,000, and in 1927 $3,849,000. (R. 927.)

The electrical wiring devices manufactured and sold by the two companies and generally known in the trade as "shelf goods" were similar in design, quality and price, and were described in their respective catalogues under various schedule numbers recognized as standard descriptions by the industry and by the United States Department of Commerce. (R. 310–311, 393–411, 415–417, 484–497, 595–597, 605, 670; Com. Ex. 67, 88.) In 1927 approximately 59 percent of the business of The Hart & Hegeman Manufacturing Company, consisting of "shelf goods," was competitive with all of the business of The Arrow Electric Company.[1] (R. 559–560.)

[1] The balance of the business of The Hart & Hegeman Manufacturing Company consisted principally of the sales of electrical switches and other devices manufactured to the order of customers for use in appliances; The Arrow Electric Company sold only a limited number of items in this field. (R. 238–239, 540–543.)

Both companies maintained branch sales offices or commission men in Boston, New York City, Baltimore, Chicago, and San Francisco, serving practically the same territories. (R. 312, 417, 418, 502–504.) Their respective sales from such branches for the years 1926 and 1927 were as follows (R. 398, 412, 464, 469, 476, 508, 517, 520, 527, 530):

1926

Cities	Hart & Hegeman Mfg. Co.	Arrow Electric Co.
Boston	$315,911	$483,933
New York	1,010,373	1,102,680
Baltimore	144,163	240,517
Chicago	1,368,941	1,524,220
San Francisco	169,254	462,989

1927

Boston	$292,227	$414,842
New York	927,747	957,372
Baltimore	92,269	140,751
Chicago	1,374,379	1,392,503
San Francisco	174,446	397,400

Both companies sent out salesmen from the branch offices, chiefly as missionary men, to call upon consumers of electrical wiring devices for the purpose of interesting them in their respective products. (R. 342, 503.) Approximately 25 percent to 30 percent of the customers of each company were common customers. (R. 481, 504–531; Com. 89–93.)

The combined volume of sales of both companies during 1927 was in excess of 25 percent of the total volume of sales in that year of all the manufacturers of electrical wiring devices in the United States. (R. 875, 927.) At the time the testimony was taken

before the examiner (1931) the total volume of sales of petitioner exceeded the volume of sales of parallel lines of electrical wiring devices of any of its competitors. (R. 881–896.)

Shiras Morris, who with his family controlled the common stock of The Hart & Hegeman Manufacturing Company and was its president and treasurer, died on February 2, 1927. (R. 350–351, 962–963.) Prior to his death Morris had contemplated a merger with the Arrow Electric Company. (R. 272–273; Com. Ex. 1, 7, 18.) Upon Morris' death Samuel P. Williams became president and treasurer of the company. (R. 270; Com. Ex. 6.) Early in July, 1927, he entered into negotiations with Edward R. Grier, then vice president of The Arrow Electric Company, for the organization of Arrow-Hart & Hegeman, Inc., the original respondent. (R. 285.) At that time the outstanding capital stock of The Hart & Hegeman Manufacturing Company was $200,000 common (consisting of 8,000 shares of a par value of $25) and $300,000 preferred. (R. 274, 307.) Prior to June, 1927, the outstanding capital stock of The Arrow Electric Company amounted to $750,000, represented by 30,000 shares of common stock of a par value of $25, which was controlled by Edward R. Grier and his associates. (R. 419, 932.) In June, 1927, The Arrow Electric Company issued $2,000,000 preferred stock to its common stockholders, who sold it to a syndicate which in turn sold it to the public. (R. 932–933.) On August 6, 1927, an agreement

was entered into between the common stockholders of the two companies, providing for the readjustment of the capital structure of The Hart & Hegeman Manufacturing Company as a preliminary step in the organization of the original respondent. (R. 288, 295; Com. Ex. 10.) Pursuant to this agreement the common stock of The Hart & Hegeman Manufacturing Company was increased from 8,000 shares of a total par value of $200,000 to 20,000 shares of a total par value of $500,000, the new shares being issued as a stock dividend to the common stockholders, and a new issue of $1,333,000 preferred stock was made, of which $800,000 was issued to the common stockholders as stock dividends, and the balance was sold to obtain funds to retire the old issue of $300,000 preferred and a preferred stock issue of a subsidiary company. (R. 301, 307; Com. Ex. 10, 11, 19, 23, 24.) The entire new issue of preferred stock of The Hart & Hegeman Manufacturing Company was sold to the public by the same syndicate which had handled the sale of the preferred stock of The Arrow Electric Company. (R. 933–936.) The preferred stock issues of both companies were non-voting except in the event that dividends were not paid thereon for six successive quarters. (R. 234, 235; Com. Ex. 23, 24, 52.)

Arrow-Hart & Hegeman, Inc., the original respondent, was organized on October 6, 1927 (R. 302–303; Com. Ex. 31, 32, 33, 34), with a capital stock of $2,000,000 represented by 200,000 shares

of common stock of a par value of $10 each (R. 307; Com. Ex. 31). On October 10, 1927, it acquired all of the common stock of The Hart & Hegeman Manufacturing Company, in exchange for 80,000 shares of its stock, and all of the common stock of The Arrow Electric Company in exchange for 120,000 shares of its stock. (R. 307; Com. Ex. 34, 36.) Samuel P. Williams became vice president and treasurer of the original respondent and also continued as president and treasurer of The Hart & Hegeman Manufacturing Company. (R. 308; Com. Ex. 30.) Edward R. Grier became president of the original respondent and continued as vice president and general manager of The Arrow Electric Company, of which company he became president on January 20, 1928. (R. 415, 423; Com. Ex. 30.) Benjamin C. Perkins became vice president and secretary of the original respondent and continued as secretary and assistant treasurer of The Arrow Electric Company. (Com. Ex. 30.) Monroe Guett became vice president of the original respondent and continued as vice-president of The Hart & Hegeman Manufacturing Company. (Com. Ex. 30.) At a meeting of the board of directors[2] of the original respondent on October 10, 1927, persons were designated who, as agents of the original respondent, should be qualified on its behalf to act as directors of the two manufacturing companies.

[2] Two directors of each manufacturing corporation became directors of the original respondent. (R. 307.)

(Com. Ex. 36.) At a meeting of the board of directors of the original respondent on January 5, 1928, Grier was authorized for a period of five years to vote The Arrow Electric Company stock, and Williams was given a like proxy to vote The Hart & Hegeman Manufacturing Company stock. (Com. Ex. 39.)

The Commission's complaint against the original respondent was issued on March 3, 1928, and an answer was filed on September 7, 1928. On November 10, 1928, the directors of the original respondent voted to recommend its dissolution (R. 77), and on the same day a letter was issued to its stockholders signed by Edward R. Grier, president, and Samuel P. Williams, vice president, stating that the dissolution of the original respondent had been recommended by counsel "to meet the recent criticism of the Federal Trade Commission" and that it was expected that distribution would be made in kind of the shares of common stock of the two manufacturing companies, constituting the entire assets of the original respondent, so that each stockholder of the original respondent would receive shares of the common stock of either one or both of the manufacturing companies. (R. 61; Com. Ex. 44.) There was enclosed with the letter a notice of a special meeting of stockholders to be held December 10, 1928 (R. 60; Com. Ex. 44) and a proxy which the stockholders were urged to sign and return as soon

as possible (R. 61–62; Com. Ex. 44). The letter read in part as follows (R. 62):

> We believe that upon distribution of this company's assets the directors of The Arrow Electric Company and of The Hart & Hegeman Manufacturing Company will propose to the stockholders of each company an agreement of consolidation of these two companies. Further details will be sent you upon the conclusion of the liquidation of Arrow-Hart & Hegeman, Inc. for your approval.
>
> Much progress has been made in efficiency and economy through the organization of your company and more, we are confident, can be accomplished by actual merger and consolidation of the two companies, viz: The Arrow Electric Company and The Hart & Hegeman Manufacturing Company.

A special meeting of the board of directors of the original respondent was held on November 30, 1928, and a general plan of reorganization was adopted. (R. 86–91; Com. Ex. 45.) This plan was as follows: (1) the original respondent, Arrow-Hart & Hegeman, Inc., would transfer the common stock of The Arrow Electric Company to a new Arrow company to be known as The Arrow Manufacturing Company, in exchange for all of the capital stock of the latter, and would make a similar transfer of the common stock of The Hart & Hegeman Manufacturing Company to a new Hart & Hegeman company to be known as The H.

& H. Electric Company, in exchange for all of the capital stock of the latter, each stockholder of the original respondent to receive for each share of stock one share in each of the new companies; (2) when such exchange of shares had been consummated the original respondent would be dissolved at the meeting already scheduled for December 10, 1928; and (3) the four corporations then in existence, viz., the two manufacturing companies and the new Arrow and Hart & Hegeman companies would be merged or consolidated under an agreement to be ratified by December 31, 1928, whereby the consolidated company would issue preferred stock equal to the combined preferred stock issues of the two manufacturing companies so that each preferred stockholder in these two companies would for each share held receive one share of the preferred stock of the consolidated corporation and whereby the consolidated company would issue common stock equal to the common stock of the original respondent, so that one share of the common stock of the consolidated company would be issued in exchange for a unit of one share of the new Arrow company and one share of the new Hart & Hegeman company, "the net result on common stock being that the stockholders of Arrow-Hart & Hegeman Incorporated will ultimately hold one share of the merged or consolidated corporation, of the par value of $10 for every one share of Arrow-Hart & Hegeman Incorporated now held by

them." (R. 87–90.) At this meeting the board of directors voted to call a special meeting of the stockholders for December 6, 1928 to consider and adopt the plan of reorganization, and approved a form of letter to be sent to the stockholders and a form of proxy, running to the same persons named in the proxy for the meeting of stockholders scheduled for December 10, 1928. (R. 90–91.)

On the same day, November 30, 1928, steps were taken to organize the two new companies, The Arrow Manufacturing Company and The H. & H. Electric Company. (R. 116–118, 158–160.) The organization of both companies was completed on the following day, December 1, 1928 (R. 119–132, 161–174), and on that day meetings of the stockholders of the two companies were held at which the plan of reorganization was approved. (R. 133–134, 175–177.) In the case of each new company two[3] of the three persons who became its incorporators, directors, officers and original subscribers were directors and officers of Arrow-Hart & Hegeman, Inc., the original respondent, and as directors had voted at the meeting of November 30, 1928, to adopt the general plan of reorganization. (R. 86, 118, 126, 131, 133, 160, 168, 173, 174.) Edward R. Grier, president of the original respondent, became president and treasurer of The Arrow Manufacturing Company and subscribed to 398 of the

[3] They also became officers and directors of petitioner upon its formation, *infra*, p. 20.

400 shares of stock of this company which were outstanding at the time of the stockholders' meeting on December 1, 1928, and at this meeting voted the shares held by him in favor of the plan of reorganization. (R. 131–134.) Samuel P. Willams, vice president and treasurer of the original respondent, became president and treasurer of the H. & H. Electric Company and subscribed to 398 of the 400 shares of stock of this company which were outstanding at the time of the stockholders' meeting on December 1, 1928, and at this meeting voted the shares held by him in favor of the plan of reorganization. (R. 173–176.)

On December 1, 1928, the letter which had been approved at the meeting of the directors of the original respondent on November 30, 1928, was sent to its stockholders under the signature of Edward R. Grier, president, and Samuel P. Williams, vice president. (R. 63–66; Com. Ex. 46.) It stated that it was supplemental to the letter of November 10, 1928. It outlined fully the plan of reorganization adopted at the meeting of the Board on November 30, 1928, stating that "these separate steps, as a part of one plan of reorganization" were desirable not only to meet the criticism of the Federal Trade Commission, but to bring the reorganization within the provisions of the Revenue Act of 1928 so that the exchange of shares would involve no tax to any stockholder. (R. 65.) The prompt cooperation of the stockholders was urged, and formal

notice of a special meeting of the stockholders to be held on December 6, 1928, was enclosed, together with the form of proxy which had been approved at the directors' meeting of November 30, 1928, authorizing the persons named to vote in favor of the plan of reorganization, to receive on behalf of the stockholders, the stock in the two new companies, The Arrow Manufacturing Company and The H. & H. Electric Company, and to surrender that stock on behalf of the stockholders in exchange for shares of the merged or consolidated corporation which "it is expected will be organized before the close of the year." (R. 64–65, 67; Com. Ex. 46.)

The special meeting of the stockholders of Arrow-Hart & Hegeman, Inc., was held as scheduled on December 6, 1928. (R. 68–75; Com. Ex. 48.) The stockholders voted to adopt the plan of reorganization approved by the directors on November 30, 1928, and voted that the consolidated corporation should be permitted to adopt as its name "The Arrow-Hart & Hegeman Electric Company." (R. 72, 74.) The entire vote of the stockholders at this meeting was made by the proxies which had been forwarded to the stockholders with the letter of December 1, 1928. (R. 74, 75.)

On the same day, December 6, 1928, the original respondent, Arrow-Hart & Hegeman, Inc., transferred the common stock of The Arrow Electric Company to The Arrow Maufacturing Company in exchange for all of its shares of stock and transferred the common stock of The Hart & Hegeman

Manufacturing Company to The H. & H. Electric Company in exchange for all of its shares of stock. (R. 77.) The shares of the two new companies, consisting in each case of 200,000 shares of a par value of $5 each, were issued in the name of the stockholders of the original respondent, Arrow-Hart & Hegeman, Inc., (of which company there were outstanding 200,000 shares of a par value of $10 each), so that each stockholder of the original respondent received for each share of stock held by him one share in each of the two new companies. (R. 147–148, 189–190.)

On December 10, 1928, as scheduled, another special meeting of the stockholders of the original respondent, Arrow-Hart & Hegeman, Inc., was held, at which the stockholders confirmed the vote of the directors to terminate the corporate existence of the original respondent and authorized the filing of a preliminary certificate of dissolution.[4] (R. 76–79; Com. Ex. 49, 57.) As in the case of the special meeting of the stockholders of the original respondent held on December 6, 1928, the entire vote of the stockholders at the meeting of December 10, 1928, was made by proxies. (R. 79, 80.)

On December 11, 1928, special meetings of the directors of the two manufacturing companies, The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, and of the two

[4] Final certificate of dissolution was filed April 11, 1929. (R. 81; Com. Ex. 58.)

new holding companies, The Arrow Manufacturing Company and The H. & H. Electric Company, were held, and the agreement of consolidation was approved and signed by the directors. (R. 84–86, 102–104, 151–152, 192–194.) On December 31, 1928, at special meetings of the stockholders of these four corporations, the agreement of consolidation was ratified and approved. (R. 92–96, 109–113, 152–156, 194–198.) At the meeting of the stockholders of the two new holding companies the entire vote was cast by the same persons, as proxies, who had acted as proxies for the stockholders of Arrow-Hart & Hegeman, Inc., the original respondent, at the meetings on December 6 and December 10, 1928.[5] (R. 157, 199, 75, 80.) The entire vote of the preferred stock at the meetings of the stockholders of the two manufacturing companies was also cast by these same persons, as proxies. (R. 100, 115.) At the meeting of the stockholders of The Arrow Electric Company its

[5] The form of proxy issued for the meeting on December 6, 1928, of the stockholders of the original respondent authorized the persons named to vote "on all shares in the new corporations * * * upon all questions which may come before any meeting or meetings of such corporations to be held prior to April 1, 1929, and especially to vote in favor of all resolutions at such meeting or meetings which may be offered for the purpose of effecting a merger or consolidation of such new corporations with The Arrow Electric Company and The Hart & Hegeman Manufacturing Company, or of any of them, in pursuance of the plan of reorganization and exchange of shares which may be adopted at the meeting of Arrow-Hart & Hegeman, Inc., on December 6, 1928." (Com. Ex. 46.)

common stock was voted by Edward R. Grier, as authorized agent of the Arrow Manufacturing Company (R. 99), and at the meeting of the stockholders of The Hart & Hegeman Manufacturing Company its common stock was voted by Samuel P. Williams, as authorized agent of The H. & H. Electric Company (R. 114).

The agreement of consolidation was approved by the Secretary of State of Connecticut on December 31, 1928 (R. 217), and a new corporation, The Arrow-Hart & Hegeman Electric Company, the petitioner herein, came into being. The petitioner issued capital stock of $5,228,300, consisting of 200,000 shares of common stock of a par value of $10 each, and 32,283 shares of preferred stock of a par value of $100 each. Pursuant to the consolidation agreement petitioner issued 18,950 shares of preferred stock in lieu of the preferred stock of The Arrow Electric Company (18,950 shares) and 13,333 shares of preferred stock in lieu of the preferred stock of The Hart & Hegeman Manufacturing Company (13,333 shares); it issued 100,000 shares of its common stock in lieu of the capital stock of The Arrow Manufacturing Company (200,000 shares) and 100,000 shares of its common stock in lieu of the capital stock of The H. & H. Electric Company (200,000 shares). No shares of the petitioner were issued in lieu of the common stocks of The Arrow Electric Company or The Hart & Hegeman Manufacturing Company. (R. 200–212.)

As the plan of reorganization was actually carried out, the stockholders of the original respondent at no time received possession of the shares of stock of the two new holding companies but simply submitted their shares after January 1, 1929, to a transfer agent, who delivered to them a like number of shares in petitioner after stamping their certificates for shares in the original respondent as follows:

THIS CERTIFIES

That the holder hereof has assented to the Plan of Reorganization adopted by the stockholders; and that under such Plan Arrow-Hart & Hegeman Incorporated has distributed all its assets and voted to terminate its corporate existence, and there has been issued to the holder hereof a certificate for the same number of shares of The Arrow-Hart & Hegeman Electric Company in full settlement of all his rights under such Plan.

ARROW-HART &
HEGEMAN, *Incorporated.*
S. P. WILLIAMS, *Treasurer.*

(R. 336, 590–591; Com. Ex. 66.)

The directors of the original respondent constituted the entire first board of directors of petitioner. (Com. Ex. 36, 37, 51; R. 200, 86.) The officers of the original respondent became the officers of petitioner, assuming precisely the same offices held by them in the original respondent. (Com. Ex. 30, 62; R. 431.) The common stockholders of petitioner on January 1, 1929 were iden-

tical with those of the original respondent on November 30, 1928. (Com. Ex. 65, 96; R. 958.) At the first meeting of the board of directors of petitioner on January 1, 1929 a dividend was declared out of the earnings of the two manufacturing companies, payable to common stockholders of petitioner when and as they converted their shares of stock in the consolidating corporations into common stock of petitioner and evidenced their consent to the plan under which the consolidation had been effected. (Com. Ex. 62.)

Although the original respondent had been advised by the Federal Trade Commission in April, 1928, that a merger of the two manufacturing companies would not oust the Commission of jurisdiction (R. 955–956), the Commission was not notified of the plan of reorganization until after it had been consummated by the formation of petitioner. (R. 955–958, 221–222.)

SUMMARY OF ARGUMENT

I. Section 7 of the Clayton Act prohibits the acquisition by a corporation of the stock of two or more corporations where the effect may be to substantially lessen competition between the corporations whose stock is acquired. In October, 1927, the original respondent acquired all of the voting stock of both manufacturing corporations. The Commission's finding of substantial competition between the two corporations in October, 1927, is fully supported by the testimony. The effect of

the acquisition by the original respondent of their voting stock was to eliminate all competition between them.

II. The public injury at which Section 7 is aimed is the probable substantial lessening of competition between two corporations. *International Shoe Company* v. *Federal Trade Commission*, 280 U.S. 291, 298; *Standard Fashion Company* v. *Magrane-Houston Company*, 258 U.S. 346, 357. In view of this legislative intent, it is not necessary for the Commission to find any other public injury in order to hold the stock acquisition unlawful. Nor is it material that certain economies are alleged to have resulted from such acquisition, or that the achievement of economies is claimed to have been the motive therefor. *United Shoe Machinery Corporation* v. *United States*, 258 U.S. 451, 462; *Aluminum Co. of America* v. *Federal Trade Commission*, 284 Fed. 401, 408, certiorari denied, 261 U.S. 616.

III. After the Commission issued its complaint the original respondent, by means of its illegal stock control, caused petitioner to be created by the consolidation of the two manufacturing corporations. The purpose of the consolidation was to oust the Commission of its jurisdiction. All of the directors, officers, and stockholders of the original respondent became the directors, officers and voting stockholders of petitioner. Under Section 11 of the Clayton Act, "read in the light of its gen-

eral purpose and applied with a view to effectuate such purpose," the Commission had jurisdiction to join petitioner, as a party respondent, in the pending proceeding and to order petitioner to divest itself of the assets of one or the other of the manufacturing corporations. *Federal Trade Commission* v. *Western Meat Company*, 272 U.S. 554, 559. Unless this be true, the Commission has no power to enforce compliance with this provision of the Clayton Act.

ARGUMENT

I

THE FEDERAL TRADE COMMISSION'S FINDING THAT THE EFFECT OF THE ACQUISITION BY ARROW-HART & HEGEMAN, INC., IN OCTOBER 1927 OF ALL OF THE VOTING STOCK OF THE TWO MANUFACTURING CORPORATIONS MAY BE TO SUBSTANTIALLY LESSEN COMPETITION BETWEEN THEM IS SUPPORTED BY THE TESTIMONY

Section 7 of the Clayton Act condemns the acquisition by a corporation of all or part of the stock of two or more corporations engaged in interstate commerce where the effect "may" be to substantially lessen competition between the corporations whose stock is acquired.

With the Commission's finding that the two manufacturing corporations were in substantial competition at the time of the stock acquisition, petitioner does not seriously quarrel.[6] The uncon-

[6] Petitioner states that one company was known for its socket line and the other for its switch line. (Petitioner's brief, p. 5.) The evidence, however, establishes that they actively competed in both lines. (R. 310, 377–378, 393–412, 416–417.)

troverted evidence on this point is full and conclusive.

In October, 1927, both corporations manufactured and sold standard electrical wiring devices known as "shelf goods." Such products were similar in design, quality and price, and were sold in the same territories, to the same class of trade and by the same method of solicitation. It was testified by the general manager and vice president of petitioner that about 59 percent of the Hart & Hegeman business was competitive with all of the Arrow business in 1927, considering "the nature of the product" sold and the "system of distribution." (R. 559–560.) Both corporations maintained branch sales offices or commission men in the same cities. Approximately 25 percent to 30 percent of the customers of each were common to both. Counsel for petitioner did not in fact dispute at the trial that the companies "were in full and complete and free competition on their shelf catalog goods" at the time of the stock acquisition (R. 539, 656), and petitioner's witnesses testified to such competition (R. 699, 925). In its brief petitioner admits that "With respect to their shelf goods, the two companies were in competition" and that all the goods manufactured by The Arrow Company were shelf goods. (Brief, pp. 5–6.)

In 1927 the total sales of The Arrow Electric Company were $3,849,000 and of The Hart & Hegeman Manufacturing Company, $4,537,000. Their combined sales in that year exceeded 25 percent of

the total volume of sales of all the manufacturers of electrical wiring devices in the United States. Petitioner was shown to be the largest producer in the United States of electrical wiring devices. Thus, not only was there substantial competition between the two corporations, but each controlled a substantial portion of the total business and together they assumed a dominant position in the industry.

The acquisition by Arrow-Hart & Hegeman, Inc., the original respondent, of the voting stocks of the two manufacturing corporations put an end to all competition between them. Control of the policies of both companies now rested in the officers and directors of the original respondent. It had the power to, and it did, designate the persons who should be qualified to act on its behalf as directors of the two companies. It issued proxies to its officers authorizing them to vote the stock which it held in these companies. Each of the manufacturing corporations had issued preferred stock shortly before the acquisition of the common stock by the original respondent. The preferred stock was non-voting except on six consecutive defaults of quarterly dividends. The earnings of the two companies were more than ample to pay preferred dividends, and they had never defaulted. (R. 928–929, 275, 424.) Thus the acquisition of the common stock gave the original respondent complete control over the two companies.

Petitioner does not deny that this control soon made itself felt in an extensive unification of the production policies of the two corporations. (Petitioner's brief, pp. 16–17; R. 252, 308–309, 348, 422, 441–442.) But it is insisted that because separate sales organizations were maintained for the two corporations, the competition previously existing was undisturbed. This conception of competition is wholly false. Competition does not consist merely of a rivalry between salesmen or sales organizations. The ability of a manufacturing plant to put out a product which the consuming public will find superior to that of a competing corporation is, we venture to state, an important element in the competition between the two companies. This element was eliminated upon the pooling of the manufacturing and engineering resources of the two corporations.

Section 7 of the Clayton Act is concerned with competition between *corporations*.[7] The original

[7] Petitioner insists that competition has been preserved even after the two corporations ceased to exist as corporate entities upon their consolidation into petitioner. (R. 482.) Of course, this is impossible. The evidence moreover establishes that there has been a considerable consolidation of the two sales organizations since the formation of petitioner. Petitioner has placed the sales divisions under the same executive head (R. 531–532); the branch offices of both divisions have been placed under joint managers (R. 383–391, 532–534); and in some territories the same salesmen represent both divisions (R. 860–862, 965–966). No price, credit, or other inducements are offered by salesmen of one division to obtain business from the other. (R. 659, 816–820, 910, 913.)

respondent had acquired all the common stock of both manufacturing corporations. Five of the nine directors of the original respondent came from financial institutions, and of the four remaining directors two came from each of the manufacturing corporations. (R. 307.) While the directors who were also on the board of one of the manufacturing corporations might have been anxious, as a matter of "pride" (petitioner's brief, p. 15), that that corporation should make a better showing than the other one, it is hardly likely that these gentlemen, and certainly inconceivable that the five directors who came from financial institutions, would have permitted the rivalry between the two sales organizations to be carried to the point where the financial condition of either manufacturing corporation might be impaired. As this Court stated in *United States* v. *Union Pacific Railroad Company*, 226 U.S. 61, 87:

> The inducement to maintain these points of advantage—low rates, superiority of service and accommodation—did not remain the same in the hands of a single dominating and common ownership as it was when they were the subjects of active promotion by competing owners whose success depended upon their accomplishment.

See also *Northern Securities Co.* v. *United States*, 193 U.S. 197, 326–327.

Petitioner states (brief p. 44) that Congress "was concerned not with the power, potential or

otherwise, which might vest in [the holding company] but rather with the question of whether that power was aimed at, and would probably bring about, a substantial lessening of competition." But it was precisely that "power, potential or otherwise" with which Congress was concerned, and it was the difficulty of establishing precisely those facts which petitioner now insists are essential, namely the purpose of the transaction and the actual lessening of competition, which Congress was particularly anxious to obviate. For this reason, the words "may be" were substituted in the statute for the word "is." (*Infra*, p. 32, note; 51 Cong. Rec., Pt. 14, p. 14464.) The purpose was to "reach" stock acquisitions "in their incipiency" before the evils at which the statute was aimed had actually been brought about, and to prevent such acquisitions "as would under the circumstances disclosed probably lessen competition" between the corporations whose stock had been acquired. See *Standard Fashion Company* v. *Magrane-Houston Company, supra*, pp. 356–357.

Temple Anthracite Coal Company v. *Federal Trade Commission*, 51 F. (2d) 656 (C.C.A. 3d), lends no support to petitioner's contention. In that case the court concluded that there was no evidence to support the Commission's finding that the corporations concerned were in substantial competition with each other at the time of the stock acquisition. The court stated (p. 660):

> There is no fact found or evidence to show that there was, prior to the acquisition of the stock, actual direct competition between the Temple Anthracite Company and the East Bear-Ridge Coal Company.

The Commission found also that the stock acquisition had the tendency of creating a monopoly in the industry. It is submitted that the acquisition of control by a holding company of two corporations which together do 25 percent of the business of an industry, creates such a tendency. This finding was, however, not essential to the Commission's determination that the acquisition was unlawful. Under Section 7 the Commission could rest its conclusion either on this finding or on its finding as to the probable substantial lessening of competition between the two corporations.

II

THE FEDERAL TRADE COMMISSION WAS NOT REQUIRED, IN ORDER TO HOLD SUCH STOCK ACQUISITION A VIOLATION OF SECTION 7 OF THE CLAYTON ACT, TO FIND ANY INJURY TO THE PUBLIC OTHER THAN THE PROBABLE SUBSTANTIAL LESSENING OF COMPETITION BETWEEN THE TWO MANUFACTURING CORPORATIONS

Petitioner contends that the Commission's finding as to the substantial lessening of competition between the two manufacturing corporations was not a sufficient basis for its conclusion that the acquisition of their stocks constituted a violation of Section 7 of the Clayton Act. It is urged that this section condemns only those acquisitions which injuriously affect the public by an actual threat of

monopoly or restraint, that is to say, which satisfy the test that this Court has applied in cases arising under the Sherman Act.

If this be true, it follows that Section 7 of the Clayton Act added nothing to the Sherman Act. This was obviously not the intention of Congress. By the Clayton Act, as its provisions and legislative history demonstrate, certain specifically defined practices were prohibited irrespective of whether they were violations of the Sherman Act. See Henderson, Federal Trade Commission, p. 27; 51 Cong. Rec., Pt. 16, p. 16144. As this Court stated in *Standard Fashion Company* v. *Magrane-Houston Company, supra* (pp. 355–356):

> The Clayton Act, as its title and the history of its enactment disclose, was intended to supplement the purpose and effect of other anti-trust legislation, principally the Sherman Act of 1890. The latter act had been interpreted by this court to apply to contracts, combinations and conspiracies which unduly obstruct the free and natural flow of commerce.
>
> * * * As the Sherman Act was usually administered, when a case was made out, it resulted in a decree dissolving the combination, sometimes with unsatisfactory results so far as the purpose to maintain free competition was concerned.
>
> The Clayton Act sought to reach the agreements embraced within its sphere *in their incipiency,* and in the section under

> consideration to determine their legality by *specific tests of its own* which declared illegal contracts of sale made upon the agreement or understanding that the purchaser shall not deal in the goods of a competitor or competitors of the seller, which may "substantially lessen competition or tend to create a monopoly." (Italic ours.)

In *United Shoe Machinery Corporation* v. *United States, supra*, the same practices which had been held by this Court not to violate the Sherman Act (247 U.S. 32) were condemned under Section 3 of the Clayton Act. This Court stated (pp. 459–460):

> The Sherman Act and the Clayton Act provide different tests of liability. This was determined in the recent case of *Standard Fashion Co.* v. *Magrane-Houston Co., ante,* 346. In that case we pointed out that the Clayton Act was intended to supplement the Sherman Act, and within its limited sphere established its own rule.

The language of Section 7 itself affords a conclusive answer to petitioner's contention. This section prohibits a corporation from acquiring stock in two or more corporations where the effect of such acquisition "may be (1) to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, *or* (2) to restrain such commerce in any section or community, *or* (3) tend to create

a monopoly of any line of commerce." (Italics and numerals ours.) The acquisition is thus made illegal if it may have any one of the three forbidden effects. See *Aluminum Company of America* v. *Federal Trade Commission, supra*, p. 407. *Swift & Company* v. *Federal Trade Commission*, 8 F. (2d) 595, 597, reversed on other grounds, 272 U.S. 554.

The legislative history of Section 7,[8] demonstrates equally as conclusively that the substantial lessening of competition between two or more corporations which might result from the acquisition of their stocks by a holding company was an evil sought to be curbed by that section, and that such lessening of competition was deemed to be injuri-

[8] The legislative history of this section was carefully reviewed in a recent opinion of the Federal Trade Commission (*Federal Trade Commission* v. *Vanadium-Alloys Steel Company*, January 12, 1934) to which attention of the Court is respectfully invited. We quote the following language from that opinion:

"The legislative history of this section leaves no doubt as to its purport. Its origin is traceable beyond the initiation of the legislation itself—to the program of a great political party. Upon the accession of that party to power, this program was made concrete by legislation. The records of the House and the debates the section evoked, however, demonstrate that an evil sought to be curbed by the section was that of corporate holding of corporate stocks to effect a merger that would lessen competition that might otherwise be substantial. Avowedly the purpose was to go beyond the criteria of the Sherman Law; the real fear was that the language chosen might relax the requirements of that act. In the Senate these objections were made even more apparent. Fear of restrictive judicial interpretation of the section was

ous to the public although it would involve no tendency to monopoly or restraint of trade.

In *International Shoe Company* v. *Federal Trade Commission, supra,* it appeared that the products of the two companies concerned were different "in appearance and workmanship, appealed to the tastes of entirely different classes of consumers," were "in the main" sold to different classes of dealers, and found their way "into distinctly separate markets." (Pp. 296–297.) Materially less than 5 percent of each company's product was sold in competitive markets. (Pp. 298–299.) Moreover, the company whose stock was acquired was faced with financial ruin. Thus, not only was there no substantial competition between the two corporations, but there was no probability

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pronounced. In order that the proof that the acquisition of such stock resulted in the lessening of competition between the two corporations might not be too difficult, and that potential as well as actual lessening of competition would satisfy the requirements of the statute, the Senate by one amendment substituted the words 'may be' for 'is', and by another eliminated the qualifying term 'substantially'. The restoration of this qualification in conference was not deemed to cut down upon the force of the rule that 'will save the little man, and yet it will reach the people who are trying to break up their competitors.' At no time in the course of these legislative proceedings was there any thought that more than a substantial lessening of competition was needed to be proven in order to warrant the issuance of an order compelling a corporation to divest itself of the stock of another corporation, nor was there any suggestion that 'substantial' competition was that type of competition whose lessening or elimination would tend to monopoly or result in restraint of commerce in the products involved."

of future competition between them. This Court, therefore, held that the stock acquisition did not violate Section 7. It was stated (p. 298):

> Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; *the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U.S. 346, 357; *that is to say, to such a degree as will injuriously affect the public.* Obviously, such acquisition will not produce the forbidden result if there be no pre-existing substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which, to begin with, is itself without real substance. (Italics ours.)

This Court thus holds that the public injury with which Section 7 is concerned is the probable substantial lessening of competition between two corporations. That this is the true significance of the above quoted language is made plain if the second sentence [9] is stated conversely as follows:

> Obviously, such acquisition will produce the forbidden result if there be pre-existing substantial competition to be affected; for the public interest is concerned in the lessen-

[9] Concerning this sentence, the court below said: "The converse is true and if there is real substance in the competition, the public interest is affected." (R. 1066–1067.)

> ing of competition, which, to begin with, is of real substance.

Had this Court been confronted in that case, as it is here, with two solvent corporations in substantial competition with each other, there can be little doubt that this Court would have found the stock acquisition to be a violation of Section 7.

Petitioner asserts that certain economies have been achieved by reason of the stock acquisition. But Congress has declared that the substantial lessening of competition between two corporations is an evil, and in view of this declared legislative intent it cannot be material that certain benefits are claimed to have resulted from the elimination of such competition. In *United Shoe Machinery Corporation* v. *United States, supra,* this Court stated (p. 462):

> * * * there is much testimony in the record tending to show that it was the excellence of the United Company's machinery and the efficiency of its service which induced lessees to acquire its machinery, but these considerations are apart from the pertinent issues which here confront us. No matter how good the machines of the United Company may be, or how efficient its service, it is not at liberty to lease its machines upon conditions prohibited by a valid law of the United States. Congress has undertaken to deny the protection of patent rights to such covenants as come within the terms of the

> Clayton Act, and if the statute is constitutional, the sole duty of the court is to enforce it in accordance with its terms.

Petitioner contends that the motive for organizing the original respondent was not to lessen competition between the manufacturing corporations but to achieve economies and to meet the emergency caused by the death of Shiras Morris, the active head of one of the companies. There was evidence, however, that Morris had himself endeavored to bring about a merger (R. 271–273; Com. Ex. 1, 17, 18); and that at least one motive for the organization of the original respondent was because "competition was growing more and more severe" (R. 273, 278). In any event, the motive of the transaction is entirely immaterial. A similar defense was interposed in *Aluminum Co. of America* v. *Federal Trade Commission, supra.* The court stated (p. 408):

> In addition to the several defenses made by the Aluminum Company there is much in the record to the effect that the need of aluminum for purposes of war and the assistance rendered the allied governments and our own government by increasing production and maintaining reasonable prices entered into the transaction. For these reasons and others it is persuasively urged that the arrangement was not a device intended to get around the Clayton Act but was a plain business transaction having the

twofold object of relieving one party from a difficult business situation and enabling the other party to meet more effectively the demands of war. *With these matters, we surmise, we have no present concern. They have to do with the motive for the transactions. We have to do only with the "effect" of the transaction; and with its effect only as it may "substantially lessen competition * * * or restrain commerce, * * * or tend to create a monopoly."* As we are not called upon to determine whether the Aluminum Company is a monopoly within the definition of the Anti-Trust Law (Comp. St. Sec. 8820 et seq.), we limit our decision to the question whether, within the policy of the Clayton Act, the transaction comes within the definition of the section. In this we are of opinion that it does, and that its effect upon actual competition as well as in destroying potential competition in a way later to make actual competition impossible was substantially to lessen competition between the corporation whose stock was acquired and the corporation making the acquisition; and second, that without regard to whether its effect was substantially to lessen competition between these two corporations, the stock acquisition did, in effect, "tend to create a monopoly." (Italics ours.)

III

AFTER THE ISSUANCE OF THE COMPLAINT THE ORIGINAL RESPONDENT, BY MEANS OF ITS UNLAWFUL STOCK CONTROL, CAUSED PETITIONER TO BE CREATED BY THE CONSOLIDATION OF THE MANUFACTURING CORPORATIONS, AND THE FEDERAL TRADE COMMISSION, THEREFORE, HAD JURISDICTION TO JOIN PETITIONER AS A PARTY RESPONDENT AND TO ORDER IT TO DIVEST ITSELF OF THE ASSETS OF ONE OR THE OTHER OF THE TWO FORMERLY COMPETING COMPANIES

Section 11 of the Clayton Act provides that if the Commission finds that any of the provisions of Section 7 have been, or are being violated, "it shall * * * issue * * * an order requiring" the offending corporation "to cease and desist from such violations, and divest itself of the stock held * * * in the manner and within the time fixed by said order." The Commission is thus given the broad power to make an order to cease and desist "from such violations," and is plainly not limited to an order for the divestiture of *stock*. This Court clearly intimated in *Thatcher Manufacturing Company* v. *Federal Trade Commission*, 272 U.S. 554, 560, and *Swift & Company* v. *Federal Trade Commission*, 272 U.S. 554, 561, that the Commission has power to order the divestiture of *assets* obtained after the issuance of a complaint through the use of stocks acquired in violation of Section 7, and the Commission's jurisdiction to make such an order was affirmatively upheld in *International Shoe Company* v. *Federal Trade Commission*, 29 F. (2d) 518, reversed on other grounds, 280 U.S. 291. See also *Federal Trade*

Commission v. *Eastman Kodak Company*, 274 U.S. 619, 626.

Petitioner contends, however, that the order in the present case exceeded the Commission's jurisdiction although the assets were acquired after the issuance of the complaint. In support of this contention petitioner asserts (1) that "as a matter of law, the holding company [the original respondent] did not organize the petitioner," (petitioner's brief, p. 51) and (2) that even assuming that petitioner was organized by the original respondent, the Commission was nevertheless without jurisdiction to issue an order against the petitioner (petitioner's brief, p. 47).

(1) The steps by which petitioner was created are set forth fully in our statement. (*Supra*, pp. 11–21.) The conclusion tobe drawn from these facts is a clear one. The original respondent for the sole purpose of ousting the Commission of its jurisdiction determined to bring about a consolidation of the two manufacturing corporations. Its control of the stock of these corporations was the means by which it carried this plan into execution.

On November 10, 1928, the directors of the original respondent voted to recommend its dissolution and promised that details of a consolidation of the two manufacturing corportions would be sent to the stockholders for their approval. On November 30, 1928, the directors adopted in detail the entire plan subsequently carried out, including not only

the transfer of the stock of the two manufacturing corporations to the two new holding companies, but also the formation of petitioner by the consolidation of these four corporations. On the following day, the original respondent announced this plan to its stockholders, stating that " These separate steps, as a part of one plan of reorganization * * * are desirable * * * to meet the criticism of the Federal Trade Commission * * * " (R. 65). Without waiting for authority from the stockholders, officers and directors of the original respondent proceeded to organize the two new holding companies, became their officers and directors, and as holders of practically all their stock, voted on December 1, 1928 to adopt the entire plan of reorganization. These companies were created solely for the purpose of holding the common stock of the manufacturing corporations until the consolidation could be consummated. On December 6, 1928, the stockholders of the original respondent adopted the entire plan for the formation of petitioner. Prior to this meeting proxies had been procured from the stockholders authorizing the persons named not only to receive the stock of the two new holding companies, but to vote that stock in favor of the consolidation. The proxies contained the express consent of the stockholders to such plan of reorganization as the proxies named should agree to. (Com. Ex. 46.) These persons had been selected by the directors of the original

respondent. (R. 958.) At the meetings of the stockholders of the four companies on December 31, 1928, at which the consolidation was consummated, these same persons, as proxies, cast the vote of the preferred stockholders of the two manufacturing corporations as well as that of the stockholders of the two holding companies. The common stock of the manufacturing corporations was voted by the holding companies, but the actual vote was made on their behalf by Edward R. Grier, president, and Samuel P. Williams, vice president and treasurer, of the original respondent.

Although the original respondent stated to its stockholders that the plan adopted was necessary to meet the criticism of the Federal Trade Commission, it is apparent that no serious effort was made by the original respondent to comply with Section 7 of the Clayton Act. The stock of the two manufacturing corporations was transferred to the newly created holding companies only after proxies had been procured from the stockholders of the original respondent authorizing the consolidation. Shares in both of the new holding companies were issued to each stockholder of the original respondent. Thus, during the existence of the holding companies, the stockholders of the original respondent retain their common interest in the stock of the two manufacturing corporations. As the plan was actually carried out the common stock of petitioner was exchanged, share for share, for the stock of the original respondent.

Petitioner was organized by the individuals who were in complete control of the original respondent. All of the officers, directors and stockholders of the original respondent became the officers, directors and voting stockholders [10] of petitioner. The persons in control of the original respondent, for the purpose of ousting the Commission of its jurisdiction, caused petitioner to be created and the assets of the manufacturing corporations to be transferred to it, with the result that these same persons have now assumed precisely the same control over petitioner as they exercised over the original respondent and the two manufacturing corporations. It is apparent that petitioner is finding its main support in the fertile fiction of the corporate entity. It is said that the original respondent was dissolved [11] and, therefore, could not exercise control over the formation of petitioner. It is urged that the two newly created holding companies and the two manufacturing corporations were free to consolidate or not as they saw fit. It is urged finally that petitioner did not itself acquire stock in violation of Section 7 of the Clayton Act. That identically the same persons were in control of each of these corporations, petitioner apparently does not deem to be material. This Court should not permit

[10] The preferred stock of petitioner is non-voting except upon default in six quarterly dividends. (R. 203.)

[11] Of course, the original respondent did not cease to exist as a corporate entity until the final certificate of dissolution was filed—April 11, 1929. (R. 81, Com. Ex. 58.)

the fiction of corporate entity to be thus misused and should hold that petitioner is answerable for the wrong of those who, by means of their control over the original respondent, the two holding companies and the two manufacturing corporations, created petitioner and now control it. See *People* v. *North River Sugar Refining Company*, 121 N.Y., 582, 615–622.

It must be clear, in any event, that the two holding companies which were created for the sole purpose of holding the unlawfully acquired stock of the manufacturing corporations were subject to the same duty, as was the original respondent, to comply with Section 7 of the Clayton Act. The statute under which petitioner was created by the consolidation of these two holding companies and of the two manufacturing corporations provides that

> * * * all debts, liabilities and duties of either of such consolidating corporations shall thenceforth attach to the consolidated corporation, and may be enforced against it to the same extent as if they had been incurred or contracted by it. (R. 219–220.)

It follows, therefore, that the duty to comply with Section 7 of the Clayton Act, to which the two holding companies were subject, attached to petitioner "and may be enforced against it."

Petitioner stresses the fact that the vote of two-thirds of the preferred stock of the manufacturing corporations was required in order to consummate the consolidation. The whole plan, however, was

conceived by the officers and directors of the original respondent. Their control of both manufacturing corporations enabled them to propose the consolidation to the preferred stockholders and to induce them to give their proxies authorizing it. It is significant that sufficient proxies were obtained within the brief space of twenty days. The fact that the preferred stockholders were advised that their interests would remain substantially the same after the consolidation [12] and the further fact that both corporations had been placed under the joint control of the original respondent, so that the consolidation would involve no change in their management, explain, no doubt, why the preferred stockholders were so easily induced to give their proxies.

[12] The letter by which the preferred stockholders were given formal notice of the consolidation was issued on December 11, 1928. It was signed by Edward R. Grier, president of The Arrow Electric Company and Samuel P. Williams, president of The Hart & Hegeman Manufacturing Company, and it was addressed to the preferred stockholders of both companies. The letter read in part as follows: "The terms of preference of such preferred stock will be substantially the same as those of the preferred shares you now hold, whether of The Arrow Electric Company or of The Hart & Hegeman Manufacturing Company, as the terms of these two issues have always been substantially identical. * * * The law requires a vote of two-thirds of each class of stock of each of the four companies and it is essential, therefore, that you sign and return the inclosed proxy promptly to Hartford National Bank and Trust Company." (Com. Ex. 52.)

Moreover, the original respondent and its stockholders actually controlled more than two-thirds of The Hart & Hegeman Manufacturing Company preferred stock and controlled almost two-thirds of the preferred stock of The Arrow Electric Company. The outstanding preferred stock of The Hart & Hegeman Manufacturing Company was 13333 shares of which 8889 shares were needed in order to approve the consolidation. (R. 113.) The common stockholders of the original respondent owned 5103 shares of the preferred stock of The Hart & Hegeman Manufacturing Company (Appendix B, *infra*). The Arrow Electric Company owned 3775 shares (Com. Ex. 70), and The Hart & Hegeman Manufacturing Company owned 50 shares (Com. Ex. 70), making a total of 8928 [13] shares or 39 shares in excess of the necessary two-thirds. The outstanding preferred stock of The Arrow Electric Company was 18950 shares of which 12634 were required to vote the consolidation. (R. 95.) The common stockholders of the original respondent owned 3717 shares of the preferred stock of The Arrow Electric Company (Appendix C, *infra*), The Hart & Hegeman Manufacturing Company owned 6260 shares (Com. Ex. 71) and The Arrow Electric Company owned 18 shares

[13] 465 additional shares were owned by Henry T. Paiste (Com. Ex. 70), head of H. T. Paiste Co., a subsidiary plant of The Hart & Hegeman Manufacturing Company which was closed shortly after the formation of the original respondent. (R. 308–309.) Mr. Paiste, of course, knew of the formation of the original respondent. (Com. Ex. 15.)

(Com. Ex. 71), making a total of 9995 [14] shares or 2639 shares less than the required two-thirds. It thus appears that the original respondent and its stockholders were short of actual control of the vote of the preferred stockholders of both manufacturing companies by only some 2600 shares of the preferred stock of The Arrow Electric Company.

The minutes of the meetings at which the consolidation was voted make it clear, moreover, that the preferred stockholders were fully informed before they voted as to all of the steps which the original respondent had taken to bring about the consolidation. (R. 93–94, 110–112.) All of the proxies [15] who represented the preferred stockholders at these meetings were also common stockholders of the original respondent and thus had received actual notice that the plan had been adopted "to meet the criticism of the Federal Trade Commission." (R. 65.) Moreover, as proxies for the stockholders of the original respondent, these individuals participated in the plan at the meetings of

[14] 75 additional shares were held by the Phoenix State Bank and Trust Company, as trustee. (Com. Ex. 71.) George H. Burt, a director of the original respondent, was chairman of the board of this bank. (Resp. Ex. 36.)

[15] L. P. Broadhurst, William R. C. Corson, Joseph R. Ensign, Philip B. Gale, John O. Enders, and Robert B. Newell. (R. 100, 115; Com. Ex. 65.) Of these, Broadhurst, Gale, and Enders were also preferred stockholders of one or both of the manufacturing corporations. (Appendices B and C, *infra*.)

the stockholders of the original respondent on December 6 and December 10, 1928, and at the meetings of the stockholders of the two holding companies on December 31, 1928.

In any event, the fact that the consent of the preferred stockholders was required for the consolidation is entirely immaterial. The Commission had exercised its jurisdiction by the issuance of a complaint. Until the Commission had carried to completion its statutory duty to restore the competition previously existing between the corporations, its jurisdiction could not be disturbed. If certain preferred stockholders cooperated, even innocently, with the original respondent in a plan to place the subject matter of the proceeding beyond the control of the Commission, that fact could not operate to oust the Commission of its jurisdiction.

(2) Petitioner's conception of the jurisdiction of the Commission is, however, quite different. For even assuming that the original respondent violated Section 7 by acquiring the stock of the manufacturing corporations and assuming further that the original respondent by means of such stock control caused petitioner to be created and the assets of the two manufacturing corporations to be transferred to it, petitioner contends nevertheless that the Commission had no jurisdiction to issue an order against the petitioner. (Petitioner's brief, pp. 26–27, 51.)

It is thus asserted that a holding company charged with violating Section 7 of the Clayton Act by acquiring stock in two competing corporations, may defeat the jurisdiction of the Commission simply by using its stock control to bring about a consolidation of the two corporations. If this be true, then the Commission has no power to enforce compliance with this provision of the Clayton Act. Under Section 11 of the Act, the Commission may not issue an order until after hearing, and the Commission has no equitable power to preserve the *status quo pendente lite.* See *National Harness Manufacturers' Association* v. *Federal Trade Commission,* 268 Fed. 705, 707 (C.C.A. 6th); *Chamber of Commerce* v. *Federal Trade Commission,* 280 Fed. 45, 48 (C.C.A. 8th).

Federal Trade Commission v. *Western Meat Company, supra,* decided at the same time as the *Thatcher* and *Swift* cases, *supra,* held that the Commission had jurisdiction to prevent stocks acquired in violation of Section 7 from being used to obtain the assets of the corporation whose stocks had been unlawfully acquired. The order which this Court sustained in that case directed that "in such divestment, no stock or property * * * to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of, respondent or any of its officers, di-

rectors, or stockholders * * *." (P. 558.) This Court said (p. 559):

> Without doubt the Commission may not go beyond the words of the statute properly construed, *but they must be read in the light of its general purpose and applied with a view to effectuate such purpose.* Preservation of established competition was the great end which the legislature sought to secure.
> * * * The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. And the same result would follow a transfer to one controlled by or acting for the respondent. (Italics ours.)

It follows from the decision in the foregoing case that the Commission had jurisdiction at the time it issued its complaint to prevent the original respondent from using its illegal stock control to bring about a consolidation of the manufacturing corporations. This jurisdiction is manifestly valueless unless the Commission had the power to extend its jurisdiction to petitioner by joining it as a party respondent. By Section 11 of the Clayton Act, Congress "vested" the Commission with "authority to enforce compliance" with Section 7 of the Act, and outlined in general terms the manner of the exercise of such authority. It must be presumed that in vesting such jurisdiction in the Commission, Congress intended to include at least

those powers without which the authority granted would be a nullity. Otherwise, "the purpose which the lawmakers entertained might be wholly defeated."

Petitioner urges that the order will work a hardship. The order required petitioner within four months to submit a report showing the form and manner of its compliance therewith. (R. 263.) No such report has been submitted. The manner of restoring the previous competitive status of the corporations is not, therefore, now presented to this Court. Petitioner has insisted throughout that the brands of the two corporations have always been marketed separately. (Petitioner's brief, p. 25.) It should therefore, involve no serious inconvenience to divorce the properties of one of the corporations from petitioner.

The Commission's sole concern is to carry out the statutory purpose, "preservation of established competition." It is believed that the ends of the statute can be achieved in this case without material injury to the stockholders. The earnings of *either* of the two corporations have been more than ample to pay the annual dividends on the *entire* preferred stock issue of petitioner.[16] The in-

[16] The authorized preferred stock issue of petitioner is $3,333,300 represented by 33,333 shares of a par value of $100. (R. 202.) This stock is entitled to annual dividends at the rate of 6½ percent per annum. (R. 202.) The total annual dividend requirement for the preferred stock is, therefore, $216,664.50. The net profits of The Arrow Electric Com-

terests of the preferred stockholders do not, therefore, present serious cause for concern. The ultimate end to be accomplished is to restore, so far as possible, the exact status existing before the wrongful acquisition, so that there will be two corporations controlled by separate groups of stockholders, officers and directors. So far as possible, each stockholder of petitioner can be given the same stock interest which he held at the time of the unlawful acquisition. If a stockholder has purchased his stock since the acquisition, it can readily be determined in which corporation he should be given stock by ascertaining the corporation in which the stock which he now owns was held at the time of the acquisition. The proportionate share of the assets to be allocated to each corporation can be determined on the basis of the relative values of their assets at the time of the unlawful acquisition.

CONCLUSION

It is respectfully submitted that the acquisition by Arrow-Hart & Hegeman, Inc., of the common stock of the two manufacturing corporations consfituted a violation of Section 7 of the Clayton Act;

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pany were in 1927, $500,000 and in 1928, $600,000; the net profits of the Arrow division of petitioner were in 1929, $585,000. (R. 928–929.) The net profits of The Hart & Hegeman Manufacturing Company were in 1927, $370,000 and in 1928, $639,000; the net profits of The Hart & Hegeman division of petitioner were in 1929, $768,000. (R. 928–929.)

that petitioner was created and the assets of the manufacturing corporations were transferred to it by means of the control exercised by Arrow-Hart & Hegeman, Inc., over such common stock; that the Federal Trade Commission had power under Section 11 of the Clayton Act to join petitioner as a party respondent in the proceeding then pending against Arrow-Hart & Hegeman, Inc., and to order petitioner to divest itself of the assets of one or the other of the two formerly competing manufacturing corporations; and that, therefore, the judgment below should be affirmed.

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APPENDIX A

Sections 7 and 11 of the Clayton Act, c. 323, 38 Stat. 730, 731–732, 734–736 (U.S.C., Title 15, Secs. 18, 21), provide, *inter alia*:

SEC. 7.

* * * * *

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

* * * * *

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the Commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board; to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. * * *

If such person fails or neglects to obey such order of the Commission or board while

the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. * * * The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and orty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the

filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

APPENDIX B

Containing a list as of Dec. 31, 1928, of the preferred stockholders of The Hart & Hegeman Manufacturing Co. who were at the same time stockholders of Arrow-Hart & Hegeman, Inc. (Com. Exs. 70, 65, 96)

	Number of preferred shares, The Hart & Hegeman Mfg. Co.	Number of shares, Arrow-Hart & Hegeman, Inc.
Bailey, George H	10	25
Bankers Trust Co., as trustee for various individuals [1]	2,760	100,870
Barnes, Roy T. H. & Co. [2]	10	280
Barney, D. Newton	100	500
Bell, Lucy A	20	15
Broadhurst, Leon P	100	300
Butterworth, Emerson M. and Corwin M	25	100
Campbell, Marion M	5	50
Cooley, Charles P	50	1,000
Cruttenden, Robert S	5	10
Daley, Margaret M	5	19
Davis, J. H. Kelso	36	300
Emory, Grace S. [3]	7	6
Fenn, Mildred Q	20	100
Fitch, Edith C	2	3
Flynn, George W	10	100
Foster, U. D	5	15
Fox, George L	100	230
Gale, Philip B	50	50
Gammon, William B. [4]	20	40
Geutt, Bertha L. [5]	5	100
Guett, Monroe [6]	24	1,050
Guett, Hortense J	41	1,050
Hartford, Connecticut Trust Co., The, trustee [7]	50	6,040
Hartford National Bank & Trust Co., The, trustee for John R. Cook [8]	35	4,200
Humphrey, Harold P	10	850
Hyde, Grace E	3	10
Lydall, Walter E	20	75
McEvoy, Nora J. & Margaret M	20	10
Mather, Arthur	5	20
Mather, Fannie L	5	13
Morris, Grace Root	250	460
Putnam & Co. [9]	33	126
Richards, John L	20	25
Root, Judson H. (Estate of) [9]	250	1,000
Sage, Edwin E	100	6,640
Sayre, Hector E	10	50
Smith, Elizabeth E	2	10
Smith, E. Terry	10	250
Smith, Gertrude D	50	50
Sullivan, Patrick J	3	50
Talcott, Morris H	10	20
Thomson, Adelaide L	100	100
Thomson, Madora W	70	600
Turillo, James J	3	4
Vinton, Paul L	5	10

Footnotes at end of table.

Containing a list as of Dec. 31, 1928, etc.—Continued

	Number of preferred shares, The Hart & Hegeman Mfg. Co.	Number of shares, Arrow-Hart & Hegeman, Inc.
Walker, Anne W. P.	7	1
Weldner, Edith F.	20	10
Weir, Janet M.	15	25
Willard, Harriet E.	3	40
Williams, Bertha McC. C.	15	100
Williams, Clarence B.	10	30
Williams, Dorothy Ely	10	20
Williams, Harry R.	50	125
Williams, Samuel P.[10]	420	4,400
Wood, William R.	75	100
Young, E. Lewis	2	5
Young, Edith E.	2	5
Total	5,103	131,687

[1] The preferred stock of The Hart & Hegeman Manufacturing Company was held as follows:
407 shares for E. Bosworth Grier, Assistant Secretary, The Arrow Electric Company. (R. 213.)
1,653 shares for Edward R. Grier, officer and director of Arrow-Hart & Hegeman, Inc., and of The Arrow Electric Company. (Resp. Ex. 36.)
200 shares for Margaret G. Grier.
500 shares for Benjamin C. Perkins, officer and director of Arrow-Hart & Hegeman, Inc., and of The Arrow Electric Company. (Resp. Ex. 36.)
The stock of Arrow-Hart & Hegeman, Inc., was held as follows:
20,176 shares for E. Bosworth Grier.
20,171 shares for Edward R. Grier.
10,096 shares for Elizabeth C. Grier.
25,216 shares for Charles G. Perkins, an officer and director of The Arrow Electric Company. (Resp. Ex. 36.)
25,211 shares for Benjamin C. Perkins.

[2] One of the syndicate which offered the preferred stock issue of The Hart & Hegeman Manufacturing Company to the public. (Com. Ex. 29.)

[3] Spelled "Emety" in the list of stockholders of Arrow-Hart & Hegeman, Inc. (Com. Ex. 65.)

[4] Spelled "Gammons" in the list of stockholders of Arrow-Hart & Hegeman, Inc. (Com. Ex. 65.)

[5] Spelled "Guett" in the list of stockholders of Arrow-Hart & Hegeman, Inc. (Com. Ex. 65.)

[6] Officer and director of Arrow-Hart & Hegeman, Inc., and an officer of The Hart & Hegeman Manufacturing Company. (Resp. Ex. 36.)

[7] The preferred stock of The Hart & Hegeman Manufacturing Company was held for Roger S. Baldwin. The stock of Arrow-Hart & Hegeman, Inc., was held as trustee under the wills of Alice R. Pease and Edward D. Redfield. Arthur P. Day, a director of Arrow-Hart & Hegeman, Inc., was vice-chairman of the Board of this trust company. (Resp. Ex. 36.)

[8] The stock of Arrow-Hart & Hegeman, Inc., was held in the name of John R. Cook; Mr. Cook was a director of The Hart & Hegeman Manufacturing Company, and an officer and director of the H. & H. Electric Company. (R. 212, 216.)

[9] Mr. Root was a director of The Hart & Hegeman Manufacturing Company. (Resp. Ex. 36.)

[10] Mr. Williams was an officer and director of Arrow-Hart & Hegeman, Inc., and of The Hart & Hegeman Manufacturing Company. (Resp. Ex. 36.)

APPENDIX C

Containing a list as of Dec. 31, 1928, of the preferred stockholders of the Arrow Electric Co. who were at the same time stockholders of Arrow-Hart & Hegeman, Inc. (*Com. Exs. 71, 65, 96*)

	Number of preferred shares, The Arrow Electric Co.	Number of shares, Arrow-Hart & Hegeman, Inc.
Allen, Marjorie H	5	5
Alley, Frank	102	2,000
Andrews, Annie C	5	12
Andrews, Marion B	8	10
Arnold, George W	5	15
Bailey, George H	10	[1] 25
Bankers Trust Co. as trustee for various individuals [2]	1,366	[1] 100,870
Barbour, Cordelia H	35	100
Barney Co., Inc., The D. N	100	870
Barry, Helen T	10	10
Barton, Mary R	20	20
Bill, Charles G	75	200
Broadhurst, Leon P	100	[3] 300
Bulkeley, William E. A	60	100
Butterworth, Emerson M. and Corwin M	25	[1] 100
Carrol, John W [3]	100	50
Chase, Charles E	100	250
Clarke, D. Elizabeth	1	5
Cruttenden, Edna B	5	10
Davock, John	10	30
Don, David	3	4
Enders, John O	50	150
Fehrer, George	10	30
Fenn, Mildred Q	20	100
Flynn, George W	13	100
Fox, Jacob L	25	100
Gale, Philip B	50	[1] 50
Griswold, Allen S	15	15
Hartford (Connecticut) Trust Co., executor [4]	30	[1] 6,040
Hall, Agnes L	50	20
Hall, Frank B	50	200
Hall, Otis B	50	200
Hansel, Harriet D	95	500
Herrmann, Emma W	5	5
Heublein, Inc., G. F	100	400
Jacobs, Ward S	30	100
Livingston, Mabel Edwina [5]	10	50
Loomis, Thomas R	5	15
Lydall, Walter E	15	[1] 75
Mitchell, Margaret S	25	150
Monette, Florence A	10	20
O'Toole, Michael J	10	10
Osborn, Annis A	5	20
Peiler, Max H	57	50
Ragatsky, Mollie	10	10
Redfield, Mary W	20	270
Reidy, David D	30	30
Reynolds, Joseph T	6	20

Footnotes at end of table.

Containing a list as of Dec. 31, 1928, etc.—Continued

	Number of preferred shares, The Arrow Electric Co.	Number of shares, Arrow-Hart & Hegeman, Inc.
Rowley, Clayton W	100	200
Russell, William C	50	50
Scranton, Emily C	50	50
Street, John F	30	100
Stryker, Emily W	20	25
Talcott, Morris H	10	[1] 20
Terrell, Martha T	20	[redacted]
Terry, Leontine H	5	5
Thomson, James L	100	500
Thomson, Madora W	100	[1] 600
Tillotson, Edwin W	3	3
Turnbull, James A	6	20
Webster, William H	10	14
Weigel, Carrie A	10	10
Willard, Harriet E	5	40
Williams, Annie L	5	10
Williams, Clarence B	10	[1] 30
Putnam & Co.[4]	30	[1] 126
Thomson, Fenn & Co.[4]	10	918
Wuskell, Elizabeth C.[7]	2	10
Wyper, Anna S	200	300
	3,717	[8] 116,757

[1] The shares of Arrow-Hart & Hegeman, Inc., held by this stockholder were also listed in Appendix B.

[2] The preferred stock of The Arrow Electric Company was held as follows:

5 shares for Clara M. Glazier.

564 shares for E. Bosworth Grier, Assistant Secretary of The Arrow Electric Company. (R. 213.)

5 shares for Edward R. Grier, officer and director of Arrow-Hart & Hegeman, Inc., and of The Arrow Electric Company. (Resp. Ex. 36.)

287 shares for Margaret G. Grier.

205 shares for Benjamin C. Perkins, officer and director of Arrow-Hart & Hegeman, Inc., and of The Arrow Electric Company. (Resp. Ex. 36.)

300 Shares for Charles G. Perkins, an officer and director of The Arrow Electric Company. (Resp. Ex. 36.)

[3] Spelled "Carroll" in the list of stockholders of Arrow-Hart & Hegeman, Inc. (Com. Ex. 65.)

[4] The preferred stock of The Arrow Electric Company was held as Executor of the Estate of Frederick A. Griswold. Arthur Day, a director of Arrow-Hart & Hegeman, Inc., was vice chairman of the Board of this trust company. (Resp. Ex. 36.)

[5] Listed as M. Edwina Livingston in the list of stockholders of Arrow-Hart & Hegeman, Inc. (Com. Ex. 65.)

[6] One of the syndicate which offered The Hart & Hegeman preferred stock issue to the public. (Com. Ex. 29.)

[7] Listed as Elizabeth Wuskell in the list of the stockholders of Arrow-Hart & Hegeman, Inc. (Com. Ex. 65.)

[8] Of this total 108,236 shares represent shares already listed in Appendix B.

U. S. GOVERNMENT PRINTING OFFICE: 1934

SUPREME COURT OF THE UNITED STATES.

No. 363.—October Term, 1933.

The Arrow-Hart & Hegeman Electric Company, Petitioner, *vs.* Federal Trade Commission. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 12, 1934.]

Mr. Justice Roberts delivered the opinion of the Court.

The Circuit Court of Appeals[1] affirmed an order of the Federal Trade Commission issued pursuant to Section 7 of the Clayton Act.[2] A writ of certiorari was granted upon the claim of petitioner that the formation of a holding company which acquired all the voting shares of two manufacturing corporations was not in violation of the section, or, if it was, the merger of the two manufacturing corporations and dissolution of the holding company after complaint by the Federal Trade Commission deprived the latter of jurisdiction to make any order against the company formed by the merger. A proper understanding of these contentions requires a somewhat detailed statement of events prior and subsequent to the issuance of the complaint.

The Arrow Electric Company, hereafter called Arrow, and the Hart & Hegeman Manufacturing Company, hereafter called Hart & Hegeman, were Connecticut corporations engaged in the manufacture and sale in interstate commerce of electric wiring devices. Both were solvent and successful. There was no community of ownership of the stock of the two concerns. Each had valuable

[1] 65 F. (2d) 336.

[2] Act of October 15, 1914, c. 323, Sec. 7; 38 Stat. 731; U. S. C. Title 15, § 18. The relevant paragraph is as follows:

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

trade names by which its goods were known to consumers. Shortly after the death of the principal stockholder, who was also the president, of Hart & Hegeman, the major interests in that company got into touch with those controlling Arrow, and after some negotiation it was agreed that economies could be effected if the business of both were brought under common control. In view, however, of the competition between the goods known by the names of the two manufacturing companies, it was thought that the trade names and the identity of the goods could best be preserved by retaining the separate corporate entities and the sales forces of the two organizations. The plan evolved was, therefore, that of a holding company which should own all of the common shares of both corporations, under the control of which the manufacturing and sales organizations should be kept separate and distinct and in competition with each other as theretofore. In order to bring about an equitable division of the stock of the proposed holding corporation, Arrow issued to its common stockholders a dividend in preferred stock. The recipients sold the preferred shares to a syndicate, which in turn sold them to the public. Hart & Hegeman increased its common stock and issued the new stock as a stock dividend. It also created an issue of preferred stock, which was sold to the public. Prior to the acquisition of the common stock by the holding company the capitalization was as follows:

Arrow—Common stock, $750,000, par $25. Preferred stock, $2,000,000, par $100.

Hart & Hegeman—Common Stock, $500,000, par $25, Preferred Stock, $1,333,300, par $100.

The holders of preferred stock in each company were without the right to vote for directors except upon default in the payment of six successive dividends, in which case the preferred stockholders were entitled to elect the board. In October, 1927, Arrow-Hart & Hegeman, Incorporated, hereafter called the holding company, was organized under the laws of Connecticut. It had only common stock. The owners of all of the common shares of Arrow exchanged them for 120,000 shares of the stock of the holding company and the owners of all the common shares of Hart & Hegeman exchanged them for 80,000 shares of the same stock.

On March 3, 1928, the Federal Trade Commission issued a complaint in which it charged the effect of the holding and voting of all of the common shares of the two operating companies might be

to substantially lessen competition between the companies in electrical wiring devices, to restrain commerce in those devices, and to create a monopoly. The holding company filed an answer traversing these allegations. Shortly thereafter counsel advised that the company be dissolved and its assets, consisting of the stock of Arrow and of Hart & Hegeman, be distributed amongst its stockholders, and that thereupon the two latter companies merge into a single corporation under the laws of Connecticut, thus transferring to the new corporation to be formed by merger all of the assets of Arrow and of Hart & Hegeman.

It was discovered that such a program might cast heavy taxes upon the stockholders, and a modification was suggested to work out the plan in accordance with the reorganization sections of the Revenue Act of 1928. The stockholders of the holding company and the preferred stockholders of both the operating companies were notified of the original plan and of its modification, and proxies were asked so that their votes might be recorded at corporate meetings intended to be held to carry out the proposal. A two-thirds vote of both preferred and common stock is required by the law of Connecticut to authorize a merger.

In lieu of the original program of distribution of the shares owned by the holding company to its stockholders, the shares of Arrow were transferred to a new company, called the Arrow Manufacturing Company, and those of Hart & Hegeman to another new company, known as the H. & H. Electric Company, against the issue of all of the shares of these companies respectively. The stock so to be issued by these two new holding companies was, by the direction of the original holding company, issued directly to its stockholders. As soon as this transfer of all its assets had been made to the two new holding companies by the old one, the latter by corporate action dissolved. Thereafter, pursuant to directors' action, the stockholders, preferred and common, of the four companies having an interest in the assets (Arrow, Hart & Hegeman, Arrow Manufacturing Company, and the H. & H. Electric Company) approved a merger agreement whereby the petitioner, The Arrow-Hart & Hegeman Electric Company, was formed, which directly owned in its own right all of the assets formerly belonging to Arrow and to Hart & Hegeman. These transactions were consummated on or prior to December 31, 1928, except that the dissolution of the first holding company did not become final until

April 11, 1929, the law of Connecticut providing that a final certificate of dissolution should not issue until four months after the filing of the resolution for dissolution.

January 11, 1929, counsel notified the Commission of the dissolution of the holding company and the formation of the petitioner. June 29, 1929, the Commission issued a supplemental complaint, entitled jointly against the holding company (the original respondent) and the petitioner (the corporation formed by the merger). After reciting in greater detail than above set forth the action taken, this complaint asserted that the formation of the petitioner was brought about by the contrivance and at the instigation of the holding company; that the conveyance of the stocks of Arrow and Hart & Hegeman to the two new holding companies failed to restore the assets to the ownership and control of separate groups in the manner the shares were held and controlled before the formation of the original holding company; that the result of the whole plan was not a restoration of competition as required by the act of Congress, and that the Commission's jurisdiction having timely attached could not be ousted by the steps subsequently taken.

Petitioner answered the supplemental complaint, the matter was heard, and the Commission made its findings. In addition to the facts above recited, the Commission found that at the time of the acquisition of the stocks of Arrow and Hart & Hegeman by the holding company, those corporations were in direct and substantial competition in interstate commerce, and after the formation of the holding company competition between them had been substantially curtailed. The Commission concluded: the acquisition by the holding company of the shares of the two manufacturing companies might substantially lessen competition between them, restrain interstate commerce, and create a monopoly; the divestment by the holding company was not a compliance with the Clayton Act; the petitioner was organized by the holding company, and its creation was an artifice to evade the provisions of Sections 7 and 11 of the Clayton Act; and the effect of the organization of the petitioner and "the acquisition by it of the common or voting stocks of" Arrow and Hart & Hegeman has been, is, and may be to suppress competition between the two manufacturing companies, to restrain interstate commerce, and to create a monopoly.

The Commission entered an order commanding the petitioner to cease and desist from violation of the provisions of Section 7 of the Clayton Act, and to divest itself "of all the common stock of" Hart & Hegeman "so as to include in such divestment" the said company's manufacturing plants and equipment, and all other property necessary to the conduct and operation thereof as a complete going concern, and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of Hart & Hegeman; or, in the alternative, to divest itself of "all the common stock of" Arrow in the same manner. It was further ordered "that such divestment of the common stock or assets" of Arrow or Hart & Hegeman, as the case might be, should not be made directly or indirectly to the petitioner or any stockholders, officers, employees, or agents of or under the control of the petitioner.

The findings with respect to the effect of the acquisition and ownership by the holding company of the shares of the two manufacturing corporations are attacked as unsupported in fact and unjustified in law. The record is said to disclose that competition was not in fact diminished but preserved. And it is further argued that if competition was or might be in some measure curtailed by the device of a holding company the result is unimportant and insignificant unless the public was injured, and not only is there a total absence of proof of injury to the public, but much affirmative evidence that consumers were benefitted by reduction of prices consequent on manufacturing efficiency made possible by unified control.

It is unnecessary to discuss or to decide the questions thus raised, for we think the Commission lacked authority to issue any order against the petitioner.

Section 7 of the Clayton Act forbids any corporation to acquire the whole or any part of the share capital of two or more corporations, where the effect of the acquisition or the use of the stock by voting or otherwise may be to substantially lessen competition between such corporations, restrain competition in interstate commerce or create a monopoly in any line of commerce. Section 11[3] specifies the remedy which the Commission may apply, namely, that it may, after hearing, order the violator to divest itself of the stock held contrary to the terms of the Act. The statute does

[3]U. S. C. Title 15 § 21.

not forbid the acquirement of property, or the merger of corporations pursuant to state laws, nor does it provide any machinery for compelling a divestiture of assets acquired by purchase or otherwise, or the distribution of physical property brought into a single ownership by merger.

If, instead of resorting to the holding company device, the shareholders of Arrow and Hart & Hegeman had caused a merger, this action would not have been a violation of the Act. And if, prior to complaint by the Commission, the holding company, in virtue of its status as sole stockholder of the two operating companies, had caused a conveyance of their assets to it, the Commission would have been without power to set aside the transfers or to compel a reconveyance. *Thatcher Mfg. Company* v. *Federal Trade Commission*, 272 U. S. 554, 560, 561.

Clearly, also, if the holding company had, before complaint filed, divested itself of the shares of either or both of the manufacturing companies, the Commission would have been without jurisdiction. And it might with impunity, prior to complaint, have distributed the shares it held pro rata amongst its stockholders. The fact that in such case the same group of stockholders would have owned shares in both companies, whereas theretofore some owned stock in one corporation only, and some held stock solely in the other, would not have operated to give the Commission jurisdiction. For if the holding corporation had effectually divested itself of the stock, the Commission could not deal with a condition thereafter developing although thought by it to threaten results contrary to the intent of the Act. Compare *National Harness etc. Association* v. *Federal Trade Commission*, 268 Fed. 705; *Chamber of Commerce* v. *Federal Trade Commission*, 280 Fed. 45.

Moreover, the holding company could have ousted the Commission's jurisdiction after complaint filed, by divesting itself of the shares, for that was all the Commission could order. And if it had so divested itself the transferees of the shares could immediately have brought about a corporate merger without violating the Clayton Act. We think that is precisely the legal effect of what was done in the present case. The holding company divested itself of the shares, and thereafter the owners of these common shares united with the holders of the preferred shares to bring about a merger.

The Commission apparently was doubtful of its authority to promulgate the order which it entered. This is evidenced by the terms of the findings and the order. In its final conclusion the Commission refers to "the acquisition by the said new respondent [the petitioner] through merger, of the common or voting stocks of the said Hart & Hegeman Manufacturing Company and Arrow Electric Company . . . ," and denominates this a violation of Section 7 of the Clayton Act. This, of course, is in the teeth of the obvious fact that the petitioner never acquired the stock of either Arrow or Hart & Hegeman. In its order the Commission directs that the petitioner cease and desist from violation of the provisions of Section 7 of the Act, and "divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Company acquired by it as a result of the merger"; and then adds that it shall do this so as to include in such divestment the manufacturing plants and assets of Hart & Hegeman; and in the alternative the order applies to the stock and manufacturing plants of Arrow. This is a tacit admission that the Commission is without jurisdiction to act unless the alleged violator holds stocks of other corporations. The Commission's own findings show that the petitioner never held any stock of either company, but the order, nevertheless, requires that the petitioner divest itself of those stocks.

The argument on behalf of the Commission is that while it is true the petitioner never owned any stock of Arrow or Hart & Hegeman, the holding company, against whom the complaint was originally directed, did hold such stocks in violation of the statute when the proceeding was initiated; and, instead of parting with the shares in good faith, ineffectually attempted to alter the status by initiating and carrying through the merger, the dissolution of which is the aim of the Commission's order.

We think the Commission's premise with respect to the activities of the holding company in bringing about the merger is without support. When the Commission filed its complaint those who had previously been the common stockholders of Arrow and Hart & Hegeman, respectively, had become the owners of the shares of the holding company. While those shares represented at two removes the physical assets of the enterprise, they nevertheless evidenced the equity ownership of those assets. At that time Arrow and Hart & Hegeman were still separate corporate entities, and

about 73% of their outstanding capital stock was preferred stock held by the public, is no wise affected by the creation of the holding company. After the holding company had conveyed the Arrow stock to a new holding company, and the Hart & Hegeman stock to another new holding company, the only persons who could bring about a merger and consequent consolidation of assets were the preferred and common stockholders of Arrow and Hart & Hegeman. Under the laws of Connecticut two-thirds of the outstanding stock of each class had to vote affirmatively to authorize a merger. While the holding company proposed the plan for accomplishing a merger, and sponsored the preliminary steps to that end, obviously that company had no power to consummate it. That power resided in the equity owners of the assets, the preferred and common stockholders of Arrow and Hart & Hegeman. The common stockholders acted through the two holding companies, but the ultimate decision and action was theirs, through whatever instrumentality effected. Quite as vital to the accomplishment of the plan was the consent of preferred stockholders. It is true the consent was given through execution of proxies; but the shareholders were at liberty to give or to withhold their proxies, and it would be quite beyond reason to hold, as the Commission suggests, that all corporate entities and all stockholder relationship to the property should be disregarded and the original holding company be treated as the sole and efficient agent in the accomplishment of the merger. To do this would be to disregard the actualities, including the fact that the holding company had been effectually dissolved before the merger was voted upon by any of those having an equity interest in the assets.

But if we assume that the holding company against which the complaint was originally directed, brought about a change in legal status, so that before the Commission acted, that company ceased to exist, as did the shares it formerly owned, and a corporation formed by merger held all the assets in direct ownership, the respondent's position is no better. The Commission is an administrative body possessing only such powers as are granted by statute. It may make only such orders as the Act authorizes; may order a practice to be discontinued and shares held in violation of the Act to be disposed of; but, that accomplished, has not the additional powers of a court of equity to grant other and fur-

ther relief by ordering property of a different sort to be conveyed or distributed, on the theory that this is necessary to render effective the prescribed statutory remedy. Compare *Federal Trade Commission* v. *Eastman Kodak Co.*, 274 U. S. 619, 623. Where shares acquired in violation of the Act are still held by the offending corporation an order of divestiture may be supplemented by a provision that in the process the offender shall not acquire the property represented by the shares. *Federal Trade Commission* v. *Western Meat Co.*, 272 U. S. 554. In the present case the stock which had been acquired contrary to the Act was no longer owned by the holding company when the Commission made its order. Not only so, but the holding company itself had been dissolved. The petitioner, which came into being as a result of merger, was not in existence when the proceeding against the holding company was initiated by the Commission, and never held any stock contrary to the terms of the statute. If the merger of the two manufacturing corporations and the combination of their assets was in any respect a violation of any anti-trust law, as to which we express no opinion, it was necessarily a violation of statutory prohibitions other than those found in the Clayton Act. And if any remedy for such violation is afforded, a court and not the Federal Trade Commission is the appropriate forum. Compare *Federal Trade Commission* v. *Western Meat Co.*, *supra*.

The judgment is

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 363.—October Term, 1933.

The Arrow-Hart & Hegeman Electric Company, Petitioner, *vs.* Federal Trade Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 12, 1934.]

Mr. Justice Stone.

I think the decree should be affirmed.

While this proceeding was pending before the Federal Trade Commission to compel a holding company to divest itself of the controlling common stock of two competing corporations which it had acquired in violation of § 7 of the Clayton Act, that stock was used to effectuate a merger of the competing corporations. It is now declared that, however gross the violation of the Clayton Act, however flagrant the flouting of the Commission's authority, the celerity of the offender in ridding itself of the stock before the Commission could complete its hearings and make an order restoring the independence of the competitors, leaves the Commission powerless to act against the merged corporation. This is the case, it is said, because the Clayton Act does not, in terms, forbid mergers, which may be formed by the stockholders of independent competing corporations; and, since the holding company was not the "sole and efficient agent in the accomplishment of the merger," which was effected upon the consent of the various classes of stockholders of the merged companies, it is concluded that the holding company, by its divestment of the stock, complied with the Clayton Act and in effect did "all the Commission could order," so there is no longer any ground for complaint. Further, notwithstanding the authority broadly conferred on the Commission "to enforce compliance" with § 7 "whenever . . . any person . . . has violated" its provisions, it is said that as the statute in terms specifies only a single method by which compliance can be compelled—ordering the offender to divest itself of the stock—the Commission can make no other form of order.

Apart from the objection that the decision now reached is calculated to encourage hasty and ill considered action by the Commis-

sion in order to avoid defeat of its jurisdiction by the adroit manipulations of offenders against the Clayton Act, I am unable to construe so narrowly a statute designed, as I think, to prevent just such suppression of competition as this case exemplifies.

1. It is true that the Clayton Act does not forbid corporate mergers, but it does forbid the acquisition by one corporation of the stock of competing corporations so as substantially to lessen competition. It follows that mergers effected, as they commonly are, through such acquisition of stock necessarily involve violations of the Act, as this one did. Only in rare instances would there be hope of a successful merger of independently owned corporations by securing the consent of their stockholders in advance of the acquisition of a working stock control of them. Hence the establishment of such control by the purchase or pooling of the voting stock, often effected in secrecy, is the normal first step toward consolidation. It is by this process that most corporate consolidations have been brought about, often by adding one consolidation to another through periods of years. Compare *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co.*, 221 U. S. 106; *United States* v. *United States Steel Corp.*, 251 U. S. 417; see Bonbright and Means, The Holding Company, 30, 50.

Unless we are to close our eyes to this open chapter in the record of corporate concentration, an examination of the legislative history of the Clayton Act, and that of the earlier Sherman Act, can leave no doubt that the former was aimed at the acquisition of stock by holding companies not only as itself a means of suppressing competition but as the first and usual step in the process of merging competing corporations by which a suppression of competition might be unlawfully perpetuated. Thus one of the evils aimed at, the merger of competing corporations through stock control, was reached in its most usual form by forbidding the first step, the acquisition of the stock of a competing corporation, and by conferring on the Trade Commission authority to deal with the violation. It seems plain, therefore, that the illegality involved in acquiring the common stock of the competing companies, which was the first step toward the merger, was neither lessened nor condoned by taking the next and final steps in completing it. There is, then, no basis for contending that the Act has not been violated, or that the violation has been excused simply because events were pushed

to the very conclusion that § 7 was designed to forestall.

2. It is also true that the holding company divested itself of the stock of the two competing operating companies before the Commission had an opportunity to make its order; but it does not follow that it had done all that the Commission could command and that thus the statute was satisfied. Mere divestment of the stock is not enough. The manner of divestment is likewise subject to the requirements of the Clayton Act. This Court has recognized that the purpose of the Act is to restore the competition suppressed by the acquisition of the stock and has specifically held, over objections such as are now made, that the Commission has power not only to order divestment but to prescribe that it shall be done in a manner that will restore competition. *Federal Trade Commission* v. *Western Meat Company*, 272 U. S. 554.

Here the Commission has held that the divestment was not a compliance with the statute. In determining whether it was right in this conclusion, the manner of divestment and the activity of the holding company after the complaint of the Commission was filed and before the final merger of the two operating companies are of crucial significance.

When the complaint was filed the holding company was in complete control of the two operating companies through ownership of their common stock, which alone had voting power. From the moment of the acquisition of the stock it had been and it continued to be a violator of the Clayton Act. Promptly after the complaint was filed it took measures to secure the fruits of its violation. It first proposed by letter to its stockholders a consolidation of the two operating companies, and at a special meeting its board of directors formulated a detailed plan for merger. This plan involved the organization of the two new holding companies, the transfer to them respectively by the first holding company of its respective holdings of the common stock in the two operating companies in exchange for the distribution by the new holding companies of their stock to the stockholders of the first holding company. Thus for each share in the first holding company owned by its stockholders they were to receive one share in each of the new holding companies. The original holding company was then to be dissolved and the four remaining companies, the two new holding companies and the two operating companies, were to be merged.

The plan, from the beginning, contemplated that the four companies should be bound by formal agreement to effect the merger. It was adopted at a specially called meeting of the stockholders of the first holding company and was carried into effect under its active direction and control. Before its dissolution, by exercising that control it had created the two new holding companies, committed all four of its subsidiary corporations to the merger both by their corporate action and by binding agreement, and had secured the approval of its action by its own stockholders. It will be observed that the original holding company did not divest itself of the stock of the two competing operating companies in the only manner by which competition could have been restored—by returning the stock to the respective stockholders of the operating companies, from whom it had been secured, or to their successors. Instead, it continued the suppression of competition by placing the stock of the two operating companies respectively in control of the two new holding companies, tied by contract to effect the merger, and by the method of distributing the stock of the new holding companies equally to its own stockholders it lodged common ownership and control of both the new holding companies in the two groups of stockholders of the original operating companies. The first holding company created the two new ones and throughout guided their policy, as it did that of the two operating companies. Acting in concert and in accord with the prearranged plan, all cooperated in executing it, and all, together with their creature, the merged company, were conscious beneficiaries of the violation of the statute.

By thus manipulating its illegally acquired stock control of the operating companies, the first holding company avoided such a distribution of the stock as would have restored competition, and made easy the merger which, if the stock had been returned to those from whom it had originally been acquired, would have been difficult or impossible. Upon these and other facts, which need not now be detailed, the Commission made its finding, abundantly supported by evidence, that the course of action taken by the holding company was not to restore competition between the operating companies, but was "an artifice and subterfuge designed in an attempt to evade the Clayton Act, to perpetuate the elimination of competition", which it had brought about by the acquisition of the stock of the operating companies.

That the stockholders in the successive holding companies, who were the ultimate owners of the operating companies, consented to all this; that two-thirds of the non-voting preferred stock of the operating companies which had never been lodged in the holding companies consented to it; that the merger might possibly have been effected in some other way, had competitive conditions been restored; all seems without significance. While under local statutes merger could not have been effected without the consent of the preferred stock, equally the consent of the stock acquired through violation of the Clayton Act and its active promotion of the merger were essential to the desired end. A prohibited act is no less illegal because its success involves the cooperation of other actors. It was the suppression of competition by the holding company, through the use which it made of the illegally acquired stock of the operating companies, and its manner of disposing of the stock so as to continue that suppression, which were violations of the Clayton Act and in conflict with the authority of the Commission. This was not any the less so because others consented.

Doubts whether the divestment effected by the first holding company was all that the Commission could have ordered are dissipated by our decision in *Federal Trade Commission* v. *Western Meat Company, supra*. There we upheld an order of divestment which directed that in transferring the stock the respondent corporation could not use it to acquire any of the property of the competing corporation, and that none of the stock could be transferred to anyone having any connection with or in any way under the influence of the offending corporation. Here we need not go so far.

3. There remains the question whether the Commission is now powerless to undo a consummation which, at an earlier stage, it could have prevented. It is said, as a matter of statutory construction, that the grant to the Commission of specific power to command offenders to divest themselves of illegally acquired stock excludes the possibility of its ordering anything more or different, however incidental or necessary it may be to the exercise of the granted power.

It would seem that this point also had been settled by our decision in the *Western Meat Company* case, where the offending company, through stock ownership, had acquired possession of the property and control of the business of a competitor. It wished to be free to divest itself of the stock without restriction, in order that it

might acquire ownership of the competitor's property by transferring the stock to hands that would make merger easy. It was argued to us there, as it is here, that the statute provides only that the Commission may order divestment of the stock; that it does not say that the Commission can command relinquishment of the power, derived from the stock ownership, to bring the competitor, or its property, under the control of the offending corporation, either directly, or through transfer of the stock into friendly hands. But that argument was rejected, and the order directing divestment of both the property and stock by placing both in the hands of those not under the influence or control of the offender was upheld. This Court said, p. 559:

"Further violations of the Act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had been wrongfully suppressed. The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. And the same result would follow a transfer to one controlled by or acting for the respondent."

No more here, than there, should it be said that the purpose of the statute must be defeated because the lawmakers did not attempt to provide with a meticulous precision how the Commission should proceed in every contingency that might arise. The dominating purpose of the statute is to restore to its original state the competition suppressed by the acquisition of the stock, and, just as we rejected a rigid literalism there in order to effect that purpose, and upheld an order which was but incidental, though necessary, to the effective exercise of the power specifically granted, so we should reject it now. Just as in that case we upheld the Commission's order directing the surrender of one of the fruits of the wrongful stock ownership—the power to place a competing unit under the offender's domination—so should we now sustain the order commanding relinquishment of another of the fruits of that ownership—the accomplished merger.

Even if the question were a new one in this Court, no plausible reason has been advanced for interpreting this remedial statute as though it were a penal law. The Clayton Act was designed to prevent abuses growing from deficiencies due to the generality of the Sherman Act. It sought to accomplish that end by conferring upon the Commission the power to strike at specific prac-

tices. In this, as in most schemes for regulation by administrative bodies, there must be a balance between the general and the particular. When the courts are faced with interpretation of the particular, administration breaks down and the manifest purpose of the legislature is defeated unless it is recognized that, surrounding granted powers, there must be a penumbra which will give scope for practical operation. In carrying such schemes into operation the function of courts is constructive not destructive, to make them, wherever reasonably possible, effective agencies for law enforcement and not to destroy them.

That the merged corporation is different from the original offender should lead to no different conclusion. It is but the creature and *alter ego* of the offender, created by the offender's exercise of power over the illegally acquired stock for the very purpose of perpetuating the suppression of competition which the Commission from the start had power to forbid. To declare that an offender, whose cause is pending before the Commission, can effect through its creatures and agents what it may not itself do, nullifies the statute.

Some scope may be given to the doctrine of *lis pendens*. It is true that the Commission is an administrative body, and not a court. But it exercises many of the powers conventionally deemed judicial. It is authorized to bring offenders before it to determine whether they are violators of the Act and, if so, "to enforce compliance" by commanding that the violation cease. There is as much reason to believe that Congress did not intend to deny to the Commission the authority to exercise effectively the granted power, and thus to preserve its jurisdiction until its function could be executed, as there would be were similar powers extended to a court of inferior jurisdiction. This is the more evident when it is remembered that obedience to the Commission's orders cannot be compelled without first subjecting them to the scrutiny of a court. Recognition of its authority involves neither departure from accepted principles nor any risk of abuse.

These considerations demand our rejection of the contention that an offender against the Clayton Act, properly brought before the Commission and subject to its order, can evade its authority and defeat the statute by taking refuge behind a cleverly erected screen of corporate dummies.

The CHIEF Justice, Mr. Justice BRANDEIS, and Mr. Justice CARDOZO concur in this opinion.